

STATE OF MINNESOTA

IN SUPREME COURT

CX-01-926

OFFICE OF
APPELLATE COURTS

JUL 21 2003

FILED

Promulgation Of Amendments To The
Minnesota Rules Of Juvenile Procedure
(Juvenile Delinquency Rules)

ORDER

WHEREAS, in its report dated December 10, 2002, the Supreme Court Juvenile Delinquency Rules Committee recommended certain amendments to the Minnesota Rules of Juvenile Procedure (Juvenile Delinquency Rules); and

WHEREAS, by order dated February 18, 2003, this court established an April 15, 2003, deadline for submitting written comments and requesting an opportunity to present oral comments on the proposal; and

WHEREAS, on April 29, 2003, the Supreme Court held a hearing on the proposed amendments; and

WHEREAS, the Supreme Court reviewed the proposed amendments and submitted comments, and is fully advised in the premises,


NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Juvenile Procedure (Juvenile Delinquency Rules) are prescribed and promulgated for the regulation of practice and procedure in juvenile delinquency matters in the courts of the State of Minnesota.
2. The attached amendments shall govern all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.
3. The inclusion and amendment of committee comments is made for convenience and does not reflect court approval of the comments made therein.

4. The Juvenile Delinquency Rules Committee shall continue to serve and monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the court at least annually.

DATED: July 18, 2003

BY THE COURT:



Kathleen A. Blatz
Chief Justice

**AMENDMENTS TO THE
JUVENILE RULES OF PROCEDURE
(JUVENILE DELINQUENCY RULES)**

1. Rule 1.01. Scope and Application.

Amend Rule 1.01 as follows:

~~Minnesota Rules of Juvenile Procedure~~ 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section ~~260.015, subd. 5~~ 260B.007, subdivision 6, juvenile petty matters as defined by Minnesota Statutes, section ~~260.015, subd. 21~~ 260B.007, subdivision 16 and juvenile traffic matters as defined by Minnesota Statutes, section ~~260.193~~ 260B.225. Procedures for juvenile traffic and petty matters are governed by ~~Minnesota Rules of Juvenile Procedure~~ 17.

Juvenile protection matters, including truants and runaways, are governed by the procedures in ~~Minnesota Rules of Juvenile Procedure~~ 37 through ~~6582~~.

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to “child's counsel” includes the child who is proceeding pro se.

Where any rule obligates the court to inform a child or other person of certain information, the information shall be provided in commonly understood, everyday language.

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, sections 1901-1963, these rules shall be construed to be consistent with that Act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections ~~257.35—257.3579~~260.751 through 260.835 applies, these rules shall be construed to be consistent with that act.

2. Comments to Rule 1.

Amend the comments to Rule 1 as follows:

Minn. R. Juv. P. 1.02 is based upon Minnesota Statutes, section ~~260.011, subd. 2(e)~~ (1994)260B.001, subd. 2 (2002).

The Indian Child Welfare Act does not apply to placements of Indian children ~~which~~that are based upon an act which, if committed by an adult, would be deemed a crime. 25 U.S.C. section 1903(1) (1988). However, Minnesota Statutes, section ~~257.352~~ (1994)260.761, subd. 2 (2002) of the Minnesota Indian Family Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minnesota Statutes, section ~~260.185~~260B.198, subd. 1(c)(1), (2) and (3) (1994)(2002) following an adjudication for a misdemeanor-level delinquent act.

3. Comments to Rule 2.

Amend the first and second paragraphs of the comments to Rule 2 as follows:

Minn._R._Juv._P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing where a juvenile over age 16 is alleged to have committed a felony, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minnesota Statutes, section ~~260.155~~260B.163, subd. 1(c) (~~1994~~)(2002). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minnesota Statutes, section 609.115, subd. 6 (1994).

Minn._R._Juv._P. 2.02 permits exclusion of persons from hearings, even when they have a right to participate, to serve the child's best interests. For example, sometimes expert opinions are offered to the court regarding a child's psychological profile or amenability to probation supervision. Counsel are usually aware of such opinions and if it serves no useful purpose or may even be detrimental to a child's best interests to hear these opinions, it may be appropriate to temporarily exclude the child from the hearing. Obviously, this should be brought to the court's attention either before the hearing or at a bench conference. Because a child charged with a juvenile petty or juvenile traffic offense does not have a right to appointment of counsel at public expense, that child cannot be excluded unless the child is represented by counsel.

Amend the first sentence of the third paragraph of the comments to Rule 2 as follows:

Minn._R._Juv._P. 2.03, subd. 2 provides that the prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion.

Amend the first sentence of the fourth paragraph of the comments to Rule 2 as follows:

Minn._R._Juv._P. 2.05 requires full disclosure by the court to all counsel on the record of any attempted ex-parte communication.

4. Rule 3.02, subd. 3. Out-of-Home Placement.

Amend Rule 3.02, subs. 3, 5, and 7 as follows:

Subd. 3. Out-of-Home Placement. In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint stand-by counsel to be available to assist and consult with the child. No out-of-home placement may

be made in disposition proceedings, in violation proceedings, ~~or in subsequent related violation proceedings~~ or in subsequent contempt proceedings, if the child was not initially represented by counsel or stand-by counsel, except as provided herein. If out-of-home placement is based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, ~~except: where a child charged with a misdemeanor is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17.01, subd. 1 (C)~~

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to Minnesota Rules of Juvenile Procedure 3.02, ~~subs.~~ subdivisions 3, 6 and 7.

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 7. Child Incompetent to Proceed. Every child ~~has the right to~~ shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney. ~~If the child waives representation, stand-by counsel shall be appointed.~~

5. Rule 3.03. Dual Representation

Amend the first paragraph of Rule 3.03 as follows:

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.07, and two or more of them are represented by the same counsel, the following procedure shall be followed:

6. Rule 3.04. Waiver of Right to Counsel.

Amend the third sentence of Rule 3.04, subd. 1 as follows:

Any waiver shall be in writing ~~and~~ or on the record.

Insert a new subdivision 2, and renumber and amend the existing subdivision 2 of Rule 3.04 as follows:

Subd. 2. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

Subd. 23. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel as required by ~~Minnesota Rules of Juvenile Procedure~~ 3.02.

7. Rule 3.05. Renewal of Advisory.

Amend Rule 3.05 as follows:

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record; at the beginning of each hearing at which the child is not represented by counsel.

8. Rule 3.07, subd. 2. Right of Guardian Ad Litem to Counsel.

Amend Rule 3.07, subd. 2 as follows:

Subd. 2. Right of Guardian Ad Litem to Counsel. ~~The guardian ad litem of the child shall be represented by the child's counsel. However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter, counsel for the child shall continue to represent the child. The~~the court may appoint separate counsel to represent the guardian ad litem.

9. Comments to Rule 3.

Amend the first paragraph of the comments to Rule 3 as follows:

Minn. R. Juv. P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minnesota Statutes, section 260.155, subd. 2 (1994)260B.163, subd. 4 (2002). The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Amend the first two sentences of the second paragraph of the comments to Rule 3 as follows:

Minn. R. Juv. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes, section § 611.262 (19942002).

Amend the third paragraph of the comments to Rule 3 as follows:

Minn. R. Juv. P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v. Wainwright, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In In re Gault, the Supreme Court extended to juveniles the constitutional right to counsel in

state delinquency proceedings. Minnesota Statutes, section ~~260.155, subd. 2 (1994)~~ 260B.163, subd. 4 (2002) expands the right to counsel and requires that an attorney shall be appointed in any proceeding in which a child is charged with a felony or gross misdemeanor.

Amend the first sentence of the fourth paragraph of the comments to Rule 3 as follows:

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, Faretta v. California, 422 U.S. 806 (1975), State v. Richards, 456 N.W.2d 260 (Minn. 1990), then Minn. R. Juv. P. 3.02, subd. 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings.

Amend the first two sentences of the sixth paragraph of the comments to Rule 3 as follows:

Minn. R. Juv. P. 3.02, subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. P. 3.04. Minn. R. Juv. P. 3.02, subd. 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of counsel without the appointment of standby counsel.

Amend the third sentence of the seventh paragraph of the comments to Rule 3 as follows:

~~Accord;~~ City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. ~~687~~484, 154 N.W.2d 687 (1967) (ordinance violation).

Amend the eighth through fourteenth paragraphs of the comments to Rule 3 as follows:

At the very least, Minn. R. Juv. P. 3.02, subd. 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. ~~See Minn. R. Juv. P. 17.03, subd. 1(D)~~ 17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the ~~defendant~~ child or prejudging the right to a fair and impartial trial. Minn. R. Juv. P. 3.02, subd. 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated ~~delinquent~~ without the assistance of counsel, ~~if those convictions~~ that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes a manifest

injustice-"). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

~~Minnesota Statutes, section 260.015, subd. 21~~ 260B.007, subd. 16 defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty offenses. ~~Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. Minn. R. Juv. P. 3.02, subd. 5 implements procedurally the legislative redefinition of misdemeanors and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel.~~ If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes, section 260.195, subd. 3 (Supp. 1995) 260B.235, subd. 4 (2002). However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court seeks is authorized to impose a dispositions that includes out-of-home placement other than those authorized pursuant to Minnesota Statutes, section 260.195, subd. 3 (Supp. 1995), then the provisions of Minn. R. Juv. P. 3.02, subd. 2 or subd. 3 may be 5 and 17.02 are applicable and provide the child a right to counsel at public expense. Where inpatient treatment is a possibility, as it is pursuant to Minnesota Statutes, section 260.195, subd. 4 (1994) for children who are found to have committed a third or subsequent juvenile alcohol or controlled substance offense, Minn. R. Juv. P. 3.02, subd. 3 provides a right to counsel at public expense even if the prosecuting attorney decides to designate the child a juvenile petty offender. See Minn. R. Juv. P. 17.03, subd. 1(D); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 5. A child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated a petty offender without the assistance of counsel, if either provides the underlying predicate for an out of home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993).

~~Minn. R. Juv. P. 3.02, subd. 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, at least at the any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.~~

Minn. R. Juv. P. 3.02, subd. 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minnesota Statutes, sections 260C.007, subd. 6(15) and 260C.201 (2002). See also Minn. R. Juv. P. 20.01. Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.

Minn. R. Juv. P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn. R. Crim. P. 17.03, subd. 5.

Minn. R. Juv. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes, section ~~260.155, subd. 8~~ (1994) 260B.163, subd. 10 (2002) ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived:").

While recognizing a right to waive counsel and proceed pro se, Minn. R. Juv. P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., State v. Rubin, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty:"); Jones, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); Burt, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel would be to provide a lawyer to consult with the defendant concerning is proposed waiver").

Amend the second and third sentences of the fifteenth paragraph of the comments to Rule 3 as follows:

See also ABA Standards of Criminal Justice, Providing Defense Services, sections 5-7.3 (1980); Minn. R. Crim. P. 5.02. Minn. R. Juv. P. 3.04, subd. 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver.

Amend the sixteenth through twentieth paragraphs of the comments to Rule 3 as follows:

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. P. 3.04, subd. 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, — 511 U.S. — ~~738, 114 S.Ct. 1921~~ (1994); United States v. Johnson, 28 F.3d 151 (D.C. Cir. 1994) (use of prior juvenile convictions to enhance adult

sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn._R._Juv._P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

Minn._R._Juv._P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in the Minn._R._Crim._P. 5.02, subds. 3-5.

Minn._R._Juv._P. 3.06, subd. 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes, section 260.251, subd. 4 (1994) 260B.331, subd. 5 (2002) ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees-"). See, e.g., *In re M.S.M.*, 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

Minn._R._Juv._P. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at public expense if they are eligible for such services.

10. Rule 4. Warrants

Amend Rule 4 as follows:

Rule 4.01 Warrant for Immediate Custody Search Warrants Upon Oral Testimony

Issuance of search warrants based on oral testimony is governed by Minnesota Rules of Criminal Procedure 33.04 and 36, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the juvenile court. When so designated, the original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents shall be deemed to be a juvenile court record under Rule 30.

Rule 4.02 Search Warrants Upon Written Application

Issuance of search warrants based upon written application is governed by Minnesota Statutes, sections 626.04 through 626.18 and Minnesota Rules of Criminal Procedure 33.04, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the

juvenile court. When so designated, the search warrant, warrant application, affidavit(s) and inventories, including statements of unsuccessful execution and documents required to be served shall be deemed to be a juvenile court record under Rule 30.

Rule 4.03 Warrants for Immediate Custody

Subd. 1. Probable Cause Required. Probable cause may be established by facts set forth in writing attached to the charging document, by facts set forth in the charging document, by affidavit(s) attached to the charging document, or by sworn testimony presented to the court on the record.

Subd. 2. Warrant. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

~~(A)~~ the child has committed a delinquent act as defined by Minnesota Statutes, section ~~260.015, subd. 5;~~ 260B.007, subdivision 6, and;

~~(B)~~(A) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

~~(C)~~(B) the child or others are in danger of imminent harm; or

~~(D)~~(C) the child has left the custody of the detaining authority without permission of the court; or

~~(E)~~(D) the child has violated a court order; or

~~(F)~~(E) the child has violated the terms of probation.

Subd. 3. Warrant for Juvenile Petty or Traffic Offenses. The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes, section ~~260.015, subd. 21~~260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes, section ~~260.193~~260B.225; and

(B) the child failed to appear after having been personally served with a summons or subpoena, ~~or~~ reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

Subd. 4. Contents of Warrant for Immediate Custody. A warrant for immediate custody shall be signed by a judge and shall:

(A) order the child to be brought immediately before the court or the child to be taken to a detention facility designated by the court to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;

(B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(C) state the age and sex of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(D) state the reasons why the child is being taken into custody;

(E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and

(F) state the date when issued, and the county and court where issued.

Rule 4.02 Execution of Warrant for Immediate Custody

Subd. 15. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 26. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 37. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 48. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a misdemeanor, petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 o'clock p.m. and 8:00 o'clock a.m. on any other day except by direction of the judge, endorsed on the warrant when exigent circumstances exist, or when the child named in the warrant is found on a public highway or street.

Subd. 59. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 610. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

11. Comments to Rule 4.

Amend the comments to Rule 4 as follows:

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn. R. Juv. P. 4.014.03, subd. 12. See Minnesota Statutes, section 260.145 (1994)260B.154 (2002). Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the petition, any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minnesota Statutes, section 260.015, subd. 5; subd. 21;260B.007, subds. 6 or 16, or Minnesota Statutes, section 260.193260B.225. In addition, the court must also find either that the summons was personally served on the child and the child failed to appear, that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent, that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minnesota Statutes, section 260.145 (1994)260B.154 (2002); Minnesota Statutes, section 260.135, subd. 5 (1994).

Minn. R. Juv. P. 4.014.03, subd. 24 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn. R. Juv. P. 5.07 within thirty-six (36) hours, excluding Saturdays, Sundays, and holidays, or within twenty-four hours, excluding Saturdays, Sundays, and holidays, if the child is detained in an adult jail or municipal lockup.

Under Minn. R. Juv. P. 4.024.03, subd. 5, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn. R. Crim. P. 3.03, subd. 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the proscribed period of time.

12. Rule 5.01. Scope and General Principles.

Amend Rule 5.01 as follows:

~~Minnesota Rules of Juvenile Procedure~~ 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

13. Rule 5.02. Definitions.

Amend Rule 5.02, subds. 1 and 3 as follows:

Subd. 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when:

- (A) the child is taken into custody;
- (B) the court orders detention of the child; ~~or~~
- (C) the court orders ~~conditions of release such as~~ out-of-home placement; ~~home detention, electronic monitoring or other physical limitations; or~~
- (D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 3. Place of Detention. A place of detention can be any one of the following places:

- (A) the child's home subject to electronic home monitoring; or house arrest ~~or other physical~~ with substantial liberty restrictions;
- (B) a foster care or shelter care facility;
- (C) a secure detention facility;
- (D) a detoxification, chemical dependency, or psychiatric facility;
- (E) an adult jail; or
- (F) any other place of detention.

14. Rule 5.03. Detention Decision.

Amend Rule 5.03, subd. 3 as follows:

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in ~~Minnesota Rules of Juvenile Procedure 5.04, subd.~~

5.03, subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

15. Rule 5.04. Release or Continued Detention.

Amend Rule 5.04, subd. 1 follows:

Subd. 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.

(A) *Detention Required.* Unless the court orders an earlier release, the child ~~shall~~may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that ~~thirty-six (36) hour~~time period.

Amend the first paragraph of Rule 5.04, subd. 2(A) as follows:

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in ~~Minnesota Rules of Juvenile Procedure 5.03~~, that:

Amend Rule 5.04, subd. 2(C) as follows:

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that ~~thirty-six (36) hour~~time period.

Amend Rule 5.04, subd. 3 as follows:

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that ~~twenty-four (24) hour~~time period, a ~~delinquency petition and a motion for certification to adult court have~~charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at an appropriate juvenile facility. The court may extend the time for a detention hearing for good cause pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 7 only if a ~~delinquency petition and a motion for certification to adult court have~~charging

document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays unless a ~~delinquency petition and a motion for certification to adult court~~ charging document has been filed with the court within that ~~six (6) hour~~ time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at an appropriate juvenile facility. The time for a detention hearing shall not be extended.

Amend Rule 5.04, subd. 4(D) as follows:

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to ~~Minnesota Rules of Juvenile Procedure 5,~~ and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Amend the last paragraph of Rule 5.04, subd. 5 as follows:

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd.~~ subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

16. Rule 5.05. Detention Reports.

Amend Rule 5.05, subd. 1(C) as follows:

(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section ~~260.171, subds. 4 and 5~~ 260B.176, subdivisions 3 and 5, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to ~~Minnesota Rules of Juvenile Procedure 3.02, subd.~~ subdivision 6, and the time such notification was given to each or the efforts made to notify them.

Amend Rule 5.05, subds. 2 through 4 as follows:

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal

guardian or legal custodian have received the notification required by Minnesota Statutes, section ~~260.171, subds. 4 and 5a~~ 260B.176, subdivisions 3 and 5 and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time ~~of~~ of the detention hearing, whichever is earlier.

Subd. 4. Notice to ~~Defense~~Child's Counsel; ~~Defense~~Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. ~~Defense~~Child's counsel shall have immediate and continuing access to the child.

17. Rule 5.06. Identification Procedures.

Amend Rule 5.06, subds. 1, and 2 as follows:

Subd. 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without court order.

(B) *Report.* A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony ~~may~~ gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Amend Rule 5.06, subd. 3(A) as follows:

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.05, ~~subd.~~subdivision 2(A).

18. Rule 5.07. Detention Hearing.

Amend Rule 5.07, subd. 1 as follows:

Subd. 1. Time and Filing. ~~The~~For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six

(36) hours of the time the child ~~being~~ was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

- (A) a report or reports that the child is being held in detention filed pursuant to ~~Minnesota Rules of Juvenile Procedure 5.05~~; and
- (B) a charging document with probable cause.

Amend Rule 5.07, subd. 2(A) as follows:

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

Amend Rule 5.07, subds. 5 and 6 as follows:

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond ~~thirty-six (36) hours~~ the time set in subdivision 1 of this rule if, after a hearing, the court finds:

(A) probable cause to believe the child committed the offense(s) alleged pursuant to ~~Minnesota Rules of Juvenile Procedure 5.04, subd. subdivision 4~~; and

(B) there is reason to believe that if the child were released, after consideration of the factors set forth in ~~Minnesota Rules of Juvenile Procedure 5.03~~, that:

- (1) the child would endanger self or others;
- (2) the child would not appear for a court hearing;
- (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision 5~~ are not made.

(B) *Detention*. If the findings required by ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 5 are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court.

(C) *Notice of Next Hearing*. On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

19. Rule 5.08. Detention Review

Amend Rule 5.08, subd. 1 as follows:

Subd. 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney.

Amend Rule 5.08, subds. 2(B) and (D) as follows:

(B) *Notice*. The person requesting a formal review shall make the request by motion as provided in ~~Minnesota Rules of Juvenile Procedure 27~~.

(D) *Continued Detention*. The court may continue the child in detention if the court makes findings pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 5.

20. Comments to Rule 5.

Amend the first sentence of the first paragraph of the comments to Rule 5 as follows:

~~Two general principles underlie Minn.R.Juv.P. 5: 1) there~~ *There is a presumption in favor of releasing an accused child unconditionally. ~~and 2) where~~ If the child cannot be released unconditionally, the least restrictive liberty restriction is favored.*

Amend the third through eighth paragraphs of the comments to Rule 5 as follows:

~~Minnesota Statutes, section 260.135, subd. 5 (1994) authorizes the officer serving a summons with a judicial endorsement to take into immediate custody a child whose health or safety is endangered. Minnesota Statutes, section 260.145 (1994) 260B.154 (2002) authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minnesota Statutes, section 260.165 (1994) 260B.175 (2002) authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest, or a peace officer to apprehend a child who has run away or who is found in circumstances that endanger the child's health or safety; or 3) by a peace officer or probation or parole officer when it is reasonably believed~~

that the child has violated the terms of probation, parole, or other field supervision. Minn. R. Juv. P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes, section ~~260.172 (1994)~~260B.176 (2002) authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. P. 5.02, subd. 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest, or other physical ~~physical~~ with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes, section ~~260.015, subd. 7 (1994)~~260B.007, subd. 7 (2002)) or shelter care facility (Minnesota Statutes, section ~~260.015, subd. 17 (1994)~~260B.007, subd. 15 (2002)), in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes, section ~~260.015, subd. 16 (1994)~~260B.007, subd. 14 (2002)), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn. R. Juv. P. 5.03, subd. 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn. R. Juv. P. 5.03, subd. 2 provides some non-exclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn. R. Juv. P. 5.03, subd. 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes, section ~~260.125, subd. 2a and 2b (1995)~~260B.125, subds. 3 and 4 (2002). However, detaining authorities should exercise individualized discretion ~~and not automatically detain all children charged with certain offenses.~~ Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The non-exclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. P. 5.03, subd. 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. P. 5.03, subd. 2.

Minn. R. Juv. P. 5.03 governs the initial custody decisions affecting a juvenile by the police, detention and court intake personnel, and the prosecuting attorney. Minn. R. Juv. P. 5.04, subd. 1 governs the liberty restrictions on a child taken into custody pursuant to a court order or warrant. Minn. R. Juv. P. 5.04, subd. 2 governs the liberty restrictions of a child taken into custody by a peace officer or other person, and then brought to a detention facility or other place of custody.

Minn. R. Juv. P. 5.04, subd. 3 is based upon ~~1996 Minn. Laws Ch. 408, Art. 6, Sec. 7, which amends~~ Minnesota Statutes, section ~~260.171, subd. 2~~260B.176, subd. 2 (2002).

The statute, ~~as amended~~, provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 7 Minnesota Statutes, section 260B.176, subd. 2 (2002). See also 42 U.S.C.A. section 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if the prosecuting attorney has filed a delinquency petition and a motion for certification within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. P. 5.04, subd. 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in an appropriate juvenile facility. Id.; See also 42 U.S.C.A. § 5633(a)(14) (1995).

Minn. R. Juv. P. 5.04, subd. 4 is based upon Minn. R. Crim. P. 4.03. Under Minn. R. Juv. P. 5.04, subd. 4, if a child arrested without a warrant is not released by law enforcement, court intake, the court, or the prosecuting attorney, then a judge or judicial officer must make a probable cause determination without unnecessary delay and in any event within forty-eight (48) hours from the time of the arrest including the day of arrest, Saturdays, Sundays, and legal holidays. That determination must occur without unreasonable delay and in no event later than forty-eight (48) hours after the arrest. There are no exclusions in computing the forty-eight-hour time limit. Even a probable cause determination within forty-eight (48) hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual or delay for delay's sake." County of Riverside v. McLaughlin, 500 U.S. 44, 64, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Minn. R. Juv. P. 5.04, subd. 4 are in addition to the requirement that a child arrested without a warrant must receive a detention hearing within thirty-six (36) hours after the arrest, exclusive of ~~the day of arrest~~, Saturdays, Sundays, and legal holidays. Because of the exclusion permitted in computing time under the "36-hour rule," compliance with that rule will not necessarily assure compliance with the "48-hour rule". The "48-hour rule" also applies to all misdemeanor cases.

Amend the first sentence of the ninth paragraph of the comments to Rule 5 as follows:

Minn. R. Juv. P. 5.05, subd. 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing and to provide facsimile copies of all reports transmitted to the court.

Amend the tenth paragraph of the comments to Rule 5 as follows:

Minn. R. Juv. P. 5.06, subd. 1 implements the provision of Minnesota Statutes, section ~~260.161, subd. 3(c)~~(~~Supp. 1995~~)299C.10 (2002), which ~~authorizes~~requires peace officers to take the fingerprints and photograph of a child taken into custody according to the laws of arrest, pursuant to Minnesota Statutes, section ~~260.165, subd. 1(b)~~(1994)260B.175, subd. 1(b) (2002). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minnesota Statutes, section 260B.171, subd. 5(c) (2002). Minn. R. Juv. P. 5.06, subd. 2 implements the provisions of Minnesota Statutes, section 299C.10 (~~Supp. 1995~~2002), which ~~authorizes~~requires law enforcement personnel to take the fingerprints of all juveniles ~~committing felonies~~arrested or charged with felony- or gross misdemeanor-level offenses.

Amend the first sentence of the eleventh paragraph of the comments to Rule 5 as follows:

Minn. R. Juv. P. 5.06, subd. 3 implements the policies of U.S. v. Wade, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification.

Amend the twelfth paragraph of the comments to Rule 5 as follows:

Minn. R. Juv. P. 5.07 implements Minnesota Statutes, section 629.725 (~~Supp. 1995~~2002) by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes, section 629.725 (~~Supp. 1995~~2002). "Crime of violence" has the meaning given it in Minnesota Statutes, section 624.712, subd. 5 (~~Supp. 1995~~2002), and also includes Minnesota Statutes, section 609.21, gross misdemeanor violations of Minnesota Statutes, section 609.224 (~~Supp. 1995~~2002), and nonfelony violations of Minnesota Statutes, sections 518B.01 (~~Supp. 1995~~2002), 609.2231 (~~1994~~2002), 609.3451 (~~Supp. 1995~~2002), 609.748 (~~Supp. 1995~~2002), and 609.749 (~~Supp. 1995~~2002). Id.

21. Rule 6.02. Tab Charge or Citation.

Amend Rule 6.02, subd. 1 as follows:

Subd. 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes, section ~~260.015, subd. 21~~ 260B.007, subdivision 16, misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes, ~~section 169.121, chapter 169A~~ may be charged by tab charge or citation. Before entering a plea of guilty or not guilty to alleged misdemeanor or gross misdemeanor charge(s), the child may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days

to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

Amend Rule 6.02, subd. 4 as follows:

Subd. 4. Notice of Court Appearance. When a tab charge or citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by ~~Minnesota Rules of Juvenile Procedure~~ 25.

22. Rule 6.03. Petition

Amend Rule 6.03, subd. 1 as follows:

Subd. 1. Generally. A child alleged to be delinquent because of a felony or gross misdemeanor offense (except gross misdemeanors under Minnesota Statutes, ~~section 169.121, chapter 169A,~~ which may be charged by tab charge or citation) shall be charged by petition. A child alleged to be delinquent because of a misdemeanor offense may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.

23. Rule 6.05. Probable Cause.

Amend Rule 6.05, subd. 2(A) as follows:

Subd. 2. When Required. There must be a finding of probable cause:

(A) before the court may issue a warrant pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 4;

24. Rule 6.06. Procedure on Filing a Charging Document with the Court.

Amend Rule 6.06 as follows:

Subd. 1. Dismissal. The court shall dismiss a charging document if it does not allege an act of delinquency as defined by Minnesota Statutes, section ~~260.015, subd. 5~~260B.007, subdivision 6, a juvenile petty offense as defined by Minnesota Statutes, section ~~260.015, subd. 2~~260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes, section ~~260.193~~ 260B.225.

Subd. 2. Arraignment. When a charging document is filed, the court administrator shall promptly schedule an arraignment on the charging document and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

25. Comments to Rule 6.

Amend the first and second paragraphs of the comments to Rule 6 as follows:

~~Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, Minnesota Statutes, sections 169.121 (Supp. 1995) and 169.129 (1994) were the law was amended to permit tab charges for these offenses to get cases to court more promptly. If a demand for formal complaint is made by an adult charged with a gross misdemeanor alcohol offense the prosecutor must file the complaint in 48 hours if the defendant is in custody and within 10 days if not in custody.~~

~~In its overhaul of juvenile statutes, the legislature also expanded the list of offenses which may be charged by tab charge rather than petition in juvenile court. See Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. A tab charge is a brief statement entered upon the records by the clerk of the offense charged and citation to the statute, rule, regulation, ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minnesota Statutes, sections 169.121 (Supp. 1995) and 169.129 (1994). Adults have the right to demand a formal complaint in place of a tab charge. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).~~

Add a new fourth paragraph, and amend the last two paragraphs of the comments to Rule 6 as follows:

In its revision of juvenile statutes, the legislature also expanded the list of offenses that may be charged by tab charge rather than petition in juvenile court. See Minnesota Statutes, section 260B.007, subd. 16 (2002). A tab charge is a brief statement entered upon the record by the clerk of the offense charged and citation to the statute, rule, regulation, ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minnesota Statutes, chapter 169A. Adults have the right to demand a formal complaint in place of a tab charge. If a demand for a formal complaint is made by an adult charged with a gross misdemeanor alcohol offense, the prosecutor must file the complaint within 48 hours if the defendant is in custody, and within 10 days if not in custody. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).

Minn. R. Juv. P. 6.06, subd. 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court. Certain offenses may be resolved without a court appearance by mailing or delivering to the court administrator a payable fine which has been predetermined by the court. Each judicial district may establish a list of minor offenses which may be settled by paying a fine. It is recommended that the list be made part of or considered by the district in establishing its dispositional criteria.

Minn._R._Juv._P. 6.03, subd. 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes, section ~~260.131 subd. 1 (1994)~~260B.141, subd. 1 (2002) provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court. Minn._R._Juv._P. 6.03, subd. 3 sets forth the necessary contents of the petition.

26. Rule 7.01. Application.

Amend Rule 7.01 as follows:

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by ~~Minnesota Rules of Juvenile Procedure~~ 17.

27. Rule 7.02. Generally.

Amend Rule 7.02 as follows:

Arrestment is a hearing at which the child shall enter a plea in the manner provided in ~~Minnesota Rules of Juvenile Procedure~~ 8.

28. Rule 7.03. Timing.

Amend the first paragraph of Rule 7.03 as follows:

Upon the filing of a charging document, the court administrator shall promptly fix a time for arrestment and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

Amend Rule 7.03, subd. 2 as follows:

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned ~~within twenty (20) days after the child has been served with~~no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

29. Rule 7.04. Hearing Procedure.

Amend Rule 7.04, subd. 1 as follows:

Subd. 1. Initial Procedure. At the commencement of the hearing, the court shall on the record:

(A) verify the name, age, race, and residence of the child who is charged;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;

(D) determine whether the child is either represented by counsel or waives counsel in the manner provided by ~~Minnesota Rules of Juvenile Procedure~~ 3;

(E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

(F) explain to the child and the child's parent(s), legal guardian or legal custodian, if present, the child's right to remain silent in this and subsequent appearances before the court; and

(G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 3.03.

30. Comments to Rule 7.

Amend the comments to Rule 7 as follows:

Minn. R. Juv. P. 7.04, subd. 1(G) and Minn. R. Juv. P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn. R. Crim. P. 17.03, subd. 5.

31. Rule 8.01. Application.

Amend Rule 8.01 as follows:

Subd. 1. Juvenile Petty and Traffic Proceedings. ~~This rule is not applicable to proceedings on~~ Pleas in juvenile petty or juvenile traffic offenses, which proceedings are governed by Minnesota Rules of Juvenile Procedure 17.06.

Subd. 2. Extended Jurisdiction Juvenile Proceedings. Pleas in extended jurisdiction juvenile proceedings shall be pursuant to are governed by Rule 19.10, subdivision 1 and Minnesota Rules of Criminal Procedure 15.

Subd. 3. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to enter a plea until the court determines that the child is competent.

32. Rule 8.02. Generally.

Amend Rule 8.02 as follows:

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with ~~Minnesota Rules of Juvenile Procedure~~ 9 through 16. If the child remains silent when confronted with charges, or if the court refuses to accept a guilty plea by the child, the court shall proceed in the same manner as if the child pled not guilty.

33. Rule 8.03. Plea of Not Guilty without Appearance

Amend Rule 8.03 as follows:

Except when the child is in detention, the court may permit a written plea of not guilty or a plea of not guilty on the record ~~may~~ be entered by child's counsel without the personal appearance of the child, child's parent(s), legal guardian or legal custodian or their counsel. The child's counsel shall immediately furnish a copy of the written plea of not guilty to the prosecuting attorney, either personally or by mail.

34. Rule 8.04. Plea of Guilty.

Amend Rule 8.04, subd. 1(D) as follows:

(D) *Right to Counsel.* If a child charged with a misdemeanor remains without counsel or with only stand-by counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on his rights and on the choice to ~~admit guilt or to deny~~ plead guilty or not guilty to the charges in the petition; and

(2) could assist the child during a trial, to protect all rights of the child that arise in the course of a trial;

Amend Rule 8.04, subd. 2(A) as follows:

(A) before disposition, if it is fair and just to do so, giving due consideration to the reasons the child gives and any prejudice that withdrawal of the plea would cause because of actions taken in reliance on the child's plea; or

Amend Rule 8.04, subd. 5 as follows:

Subd. 5. Future Proceedings. If the court accepts a plea of guilty and makes a finding that the allegations in the charging document are proved, the court shall schedule further proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 14 and 15.

35. Comments to Rule 8.

Add the following comments to Rule 8:

It is also desirable that the child be asked to acknowledge by signing the plea petition that the child has read the questions set forth in the petition or that they have been read to the child; that the child understands them; that the child gave the answers set forth in the petition; and that they are true. Suggested forms of the plea petition are appended to the rules.

36. Rule 10.01. Scope and Application.

Amend Rule 10.01 as follows:

~~Minnesota Rules of Juvenile Procedure~~ 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to ~~Minnesota Rules of Juvenile Procedure 17.10~~ 17.07, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence. ~~Pursuant to Minnesota Rules of Juvenile Procedure 1.01, references in this rule to "child's counsel" include the child who is proceeding pro se.~~

37. Rule 10.02. Evidence and Identification Disclosure.

Amend the last paragraph of Rule 10.02 as follows:

The notice required by this rule shall be provided by the prosecutor within five (5) days of a not guilty plea by the child. If child's counsel ~~for the child~~ makes a demand for disclosure pursuant to this rule, the disclosures shall be provided within five (5) days of the demand. Evidence which becomes known to the prosecutor after the deadlines for disclosure provided here, shall immediately be disclosed to child's counsel ~~for the child~~.

38. Rule 10.03. Notice of Additional Offenses.

Amend the last two sentences of Rule 10.03 as follows:

Notice of additional offenses shall be given at or before the pretrial or ~~Omnibus~~omnibus hearing or as soon after those hearings as the offenses become known to the prosecutor. If there is no pretrial or ~~Omnibus~~omnibus hearing, the notice shall be given at least seven (7) days before the trial.

39. Rule 10.04. Disclosure by Prosecuting Attorney.

In Rule 10.04, subd. 1, add a new subsection (F) and re-letter the remaining subsections as follows:

(F) *Special Education and School Disciplinary Records.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration in charging.

(G) *Exculpatory Information.* The prosecuting attorney shall disclose to the child's counsel any material or information within the possession and control of the prosecuting attorney that tends to disprove the allegation(s).

(GH) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of

members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Amend Rule 10.04, subd. 3(B) and (C) as follows:

(B) *Reports*. Except as provided in ~~Minnesota Rules of Juvenile Procedure~~ 10.04, ~~subd.subdivisions~~ 1-(C)-(FG), reports, memoranda or internal documents made by the prosecuting attorney or members of the prosecuting attorney's staff or by agents of the prosecuting attorney in connection with the matter are not subject to disclosure.

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate*. The information relative to the witnesses and persons described in ~~Minnesota Rules of Juvenile Procedure~~ 10.04, ~~subd.subdivisions~~ 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

40. Rule 10.05. Disclosure by Child.

Amend Rule 10.05, subd. 1(B) as follows:

(B) *Reports of Examinations and Tests*. The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial, extended jurisdiction juvenile proceeding or prosecution or reference certification hearing when the results or reports relate to the testimony of the witness.

Amend Rule 10.05, subd. 1(C)(1) as follows:

(C) *Notice of Defense, Witnesses for the Child and Record*.

(1) *Notice of Defenses*. The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes, section 609.035 or intoxication. Notice of a defense of mental illness or mental deficiency is governed by ~~Minnesota Rules of Juvenile Procedure~~ 20.02, ~~subd.subdivision~~ 1.

Amend Rule 10.05, subd. 1(C)(3) as follows:

(3) *Statements of Witnesses for the Child*. The child's counsel shall permit the prosecuting attorney to inspect and copy any relevant written or recorded statements of the persons whom the child intends to call as witnesses at the trial, extended jurisdiction

juvenile proceeding or prosecution or ~~reference~~certification hearing and which are within the possession or control of the child's counsel and shall permit the prosecuting attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

Amend Rule 10.05, subd. 2(B) as follows:

(B) *Notice of Time and Place of Discovery Procedures With Child.* Whenever the personal appearance of the child is required for procedures ordered pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.05, subd. subdivision 2(A), the prosecuting attorney shall inform the child's counsel of the time and place of the procedure.

Amend Rule 10.05, subd. 2(D) as follows:

(D) *Notice of Results.* The prosecuting attorney shall make available to the child's counsel the results of the procedures provided by ~~Minnesota Rules of Juvenile Procedure~~ 10.05, subd. subdivision 2(A) within five (5) days from the date the results become known to the prosecuting attorney, unless otherwise ordered by the court.

Amend Rule 10.05, subd. 3(B) as follows:

(B) *Reports.* Except as provided by ~~Minnesota Rules of Juvenile Procedure~~ 10.05, subd. subdivisions 1(A) and (B) and (C)(2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

41. Rule 10.06. Regulation of Discovery.

Amend first sentence of Rule 10.06. subd. 2 as follows:

If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, ~~the prosecuting attorney or the child's counsel~~ shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses.

42. Rule 10.07. Taking Depositions.

Amend the first sentence of Rule 10.07, subd. 2(B) as follows:

The witness shall be put ~~on~~under oath and a verbatim record of the testimony shall be made in the manner directed by the court.

Amend the last sentence of Rule 10.07, subd. 2(C)(2) as follows:

The scope and manner of examination and cross-examination in the taking of a deposition to be used at a certification or extended jurisdiction juvenile hearing shall be the same as would be allowed at a certification or extended jurisdiction juvenile hearing.

43. Comments to Rule 10.

Amend the comments to Rule 10 as follows:

Minn._R._Juv._P. 10.02 is modeled after the Minn._R._Crim._P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules.

Minn._R._Juv._P. 10.03 is modeled after Minn._R._Crim._P. 7.02 and would encompass the commonly referred to Spreigl notice derived from State v. Spreigl, 139 N.W.2d 167 (1965).

Minn._R._Juv._P. 10.05, subd. 1(C)(5) provides that a child is not required to reveal prior offenses which might result in enhancement of pending enhanceable offenses. An example of an "enhanceable offense" is a pending misdemeanor fifth degree assault which could be amended to a gross misdemeanor under Minnesota Statutes, section 609.224, subd. 2 (~~Supp. 1995~~2002) if the prosecutor knew, for instance, of the child's prior adjudication for misdemeanor assault against the same victim in another county.

44. Rule 11.02. Evidentiary and Other Issues.

Amend Rule 11.02 as follows:

At the pretrial conference, the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 12. If there is no pretrial conference, constitutional or evidentiary issues shall be raised by written motion of the child's counsel or prosecuting attorney, and the court shall schedule an omnibus hearing. The written motion must specifically set forth the issues raised.

45. Comments to Rule 11.

Amend the comments to Rule 11 as follows:

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn._R._Juv._P. 1.01.

46. Rule 12.01. Scheduling of Omnibus Hearing.

Amend the first paragraph of Rule 12.01 as follows:

The court shall hold an omnibus hearing pursuant to Minnesota Rules of Criminal Procedure, Rule 11 any time before trial to determine issues raised pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10 or 11 upon its own motion or upon motion of the child's counsel or the prosecuting attorney.

47. Rule 12.02. Scheduling of Trial.

Amend Rule 12.02 as follows:

If a demand for speedy trial ~~was~~is made, the omnibus hearing ~~will~~shall not extend the time for trial unless the court finds good cause for continuance of the trial date.

48. Comments to Rule 12.

Amend the last two sentences of the comments to Rule 12 as follows:

Continuances of trial beyond ~~a speedy trial demand~~ the time established by Minn. R. Juv. P. 13.02 are not recommended. However, the child's right to a fair trial will justify a short continuance where the child seeks reassignment of the judge pursuant to Minn. R. Juv. P. 22.

49. Rule 13.01. Purpose and Application.

Amend the last two sentences of Rule 13.01 as follows:

Extended jurisdiction juvenile trials are governed by ~~Minnesota Rules of Juvenile Procedure~~ 19. Pursuant to ~~Minnesota Rules of Juvenile Procedure 1.01~~, references in this rule to "child's counsel" include the child who is proceeding pro se.

50. Rule 13.02. Commencement of Trial.

Amend Rule 13.02, subd. 3 as follows:

Subd. 3. Release. If the child is detained and the trial has not commenced within thirty (30) days of the demand ~~or~~and a continuance has not been granted, the child shall be released subject to such nonmonetary release conditions as may be required by the court and the trial shall commence within sixty (60) days of the original demand for a speedy trial.

51. Rule 13.05. Use of Depositions at Trial.

Amend the first paragraph of Rule 13.05, subd. 1 as follows:

At a trial or hearing, a part ~~of~~ for all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if:

52. Rule 13.07. Joint Trials.

Amend Rule 13.07, subd. 2 as follows:

Subd. 2. Severance Because of Improper Joinder. Where a child was improperly joined in a proceeding, the court shall order severance upon motion of the prosecuting attorney or the child's counsel. Improper joinder is not a ground for dismissal.

53. Rule 13.08. Joinder and Severance of Offenses.

Amend Rule 13.08, subd. 2 as follows:

Subd. 2. Severance of Offenses. On motion of the prosecuting attorney or the child's counsel, the court shall sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the child's guilt or innocence of each offense or charge; or

(c) during trial, with the child's consent or upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the child's guilt or innocence of each ~~crime~~ offense or charge. Misjoinder of offenses is not a ground for dismissal.

54. Rule 13.10. Further Proceedings.

Amend Rule 13.10 as follows:

If the court makes a finding that the allegations of the charging document have been proved, the court shall hold dispositional proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.

55. Comments to Rule 13.

Amend the comments to Rule 13 as follows:

~~*Minn.R.Juv.P. 13.02, subd. 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or the child or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless*~~

~~exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991), State v. Terry, 295 N.W.2d 95 (Minn. 1980).~~

~~For children held in detention, Minn. R. Juv. P. 13.02, subd. 1 requires that a trial be commenced within thirty (30) days from the date of the speedy trial demand unless good cause is shown why the trial should not be held within that time. If the trial has not commenced within the thirty (30) days ~~and~~ a continuance has not been granted upon a showing of good cause ~~for a child held in detention~~, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.~~

~~For children not held in detention, Minn. R. Juv. P. 13.02, subd. 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or child's counsel or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re Welfare of G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991); see also State v. Terry, 295 N.W.2d 95 (Minn. 1980).~~

~~If the trial is not commenced within sixty (60) days from the date of the demand ~~for~~ a speedy trial and a continuance has not been granted for good cause, the petition shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See Barker v. Wingo, 407 U.S. 614 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)-; State v. Kasper, 411 N.W.2d 182 (Minn. 1987); ~~and~~ State v. Friberg, 435 N.W.2d 509 (Minn. 1989).~~

~~Minn. R. Juv. P. 13.07 is modeled after Minn. R. Crim. P. 17.03, subs. 2 and 3. Minn. R. Juv. P. 13.08 is modeled after Minn. R. Crim. P. 17.03, subs. 1, 3 and 4. Joint trials should be discouraged where one or more of the children is without counsel.~~

56. Rule 14.01. Agreements Permitted.

Amend Rule 14.01, subd. 1 as follows:

Subd. 1. Generally. After consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the child's counsel may agree that the juvenile proceeding will be suspended for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in ~~Minnesota Rules of Juvenile Procedure~~ 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance. The agreement shall be on the record or in writing and signed by the prosecuting attorney, the child, and the child's counsel, if any. The agreement shall contain a waiver by the child of the right to a speedy trial under ~~Minnesota Rules of Juvenile Procedure~~ 13.02, ~~subs. subdivisions~~ 1 and 2. The agreement may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony,

evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.

Amend Rule 14.01, subd. 3 as follows:

Subd. 3. Limitations on Agreements. The agreement may not specify a period of suspension longer than the juvenile court has jurisdiction over the child nor any condition other than that which could be imposed upon probation after a finding that the offenses alleged have been proved.

57. Rule 14.02. Court Approval; Filing of Agreement; Release.

Amend Rule 14.02 as follows:

All agreements made under ~~Minnesota Rules of Juvenile Procedure~~ 14.01 of this rule must be approved by the court on the record or in writing. Promptly after any written agreement is made and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the juvenile proceeding is suspended for a period specified in the statement. Upon court approval of the agreement, the child shall be released from any custody under ~~Minnesota Rules of Juvenile Procedure~~ 5.

58. Rule 14.03. Modification of Agreement.

Amend Rule 14.03 as follows:

Subject to ~~Minnesota Rules of Juvenile Procedure~~ 14.01 and 14.02 and with the court's approval on the record or in writing, the parties, by mutual consent, may modify the terms of the agreement at any time before its termination.

59. Rule 14.04. Termination of Agreement; Resumption of Proceedings.

Amend Rule 14.04, subd. 1 as follows:

Subd. 1. Upon Notice of Child or Child's Counsel. The agreement is terminated and the juvenile proceeding may resume as if there had been no agreement if the child's counsel serves upon the prosecuting attorney and files a notice with the court that the agreement is terminated.

60. Rule 14.06. Release Status Upon Resumption of Delinquency, Juvenile Petty or Juvenile Traffic Proceedings.

Amend Rule 14.06 as follows:

If the juvenile proceeding resumes under ~~Minnesota Rules of Juvenile Procedure~~ 14.04, the child shall return to the release status in effect before the juvenile proceeding was

suspended unless the court imposes additional or different conditions of release under ~~Minnesota Rules of Juvenile Procedure~~ 5.

61. Rule 14.09. Modification or Termination and Dismissal Upon Child's Motion.

Amend the first paragraph of Rule 14.09 as follows:

If, upon motion of the ~~child or~~ child's counsel and hearing, the court finds that the prosecuting attorney obtained the child's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under ~~Minnesota Rules of Juvenile Procedure~~ 10.04, the court may:

62. Rule 14.10. Court Authority to Dismiss.

Amend Rule 14.10 as follows:

Nothing in this rule shall limit the inherent power of the court to continue a case for dismissal even in the absence of an agreement by the prosecutor and child's counsel. In the event the court exercises this power:

(A) The action of the court must be on the record or in writing;

(B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under ~~Minnesota Rules of Juvenile Procedure~~ 13.02, subs. subdivisions 1 and 2;

(C) The continuance shall be on conditions provided in ~~Minnesota Rules of Juvenile Procedure~~ 14.01 subdivisions 1 and 2, and shall be subject to limitations stated in ~~Minnesota Rules of Juvenile Procedure~~ 14.01, subd. subdivision 3;

(D) The terms of the continuance may be modified on the record or in writing, by the court, with notice to all parties; and

(E) Proceedings following the continuance shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 14.04 - 14.08.

63. Comments to Rule 14.

Amend the comments to Rule 14 as follows:

Pursuant to Minn._R._Juv._P. 1.01, references to "child's counsel" include the child who is proceeding pro se.

The Minnesota Supreme Court's Juvenile Rules Advisory Committee discovered that many juvenile court practitioners did not appreciate the limited benefits of withholding adjudication (now designated "continuance without adjudication") and were inadvertently misrepresenting its benefits to juveniles. See Comment to Minn._R._Juv._P. 15. Many practitioners were, in effect, treating withholding of adjudication as a continuance for dismissal or pretrial diversion, similar to Minn._R._Crim._P. 27.05. In order to avoid future misuse of the continuance without adjudication and allow juvenile court practitioners the benefits of continuance for dismissal, Minn._R._Crim._P. 27.05 was incorporated into the juvenile rules. Because there is no finding that the allegations of the charging document

have been proved in a continuance for dismissal, the offense should not count towards a juvenile's future criminal history score under the sentencing guidelines.

All agreements under this rule, including written agreements, must be approved by the court in writing or on the record.

~~Continuance~~ A continuance for dismissal and/or continuance without adjudication under Minn. R. Juv. P. 15.05, subd. 4 are not the only options available for dealing with an alleged juvenile offender without formal process. By July 1, 1995, every Every county attorney ~~should~~ is required to have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes, section 388.24 (Supp. 1995/2002). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Minn. R. Juv. P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. The rule in no way limits the court's Rule 14.10 further provides that the court has the inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. See State v. Krotzer, 531 N.W.2d 862 (Minn. Ct. App. 1995) pet. for rev. granted (Minn. July 20, 1995). In re Welfare of J.B.A., 581 N.W.2d 37 (Minn. Ct. App. 1998).

64. Rule 15.01. Generally.

Amend Rule 15.01 as follows:

Subd. 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under ~~Minnesota Rules of Juvenile Procedure 8.04~~ and findings after trial pursuant to ~~Minnesota Rules of Juvenile Procedure 13.09~~.

Subd. 2. Application. This rule applies to delinquency dispositions. ~~Minnesota Rules of Juvenile Procedure 17~~ governs dispositions for juvenile petty offenses and juvenile traffic offenses. ~~Minnesota Rules of Juvenile Procedure 19~~ provides for sentence and disposition in extended jurisdiction juvenile cases.

65. Rule 15.02. Timing.

Amend the first sentence of Rule 15.02, subd. 2 as follows:

Subd. 2. Order. The court shall enter a dispositional order pursuant to ~~Minnesota Rules of Juvenile Procedure 15.05~~:

Add the following text at the end of Rule 15.02, subd. 3:

If a dispositional order for a child is not entered within the time limits prescribed by this rule, the court may dismiss the case.

Amend the second sentence of Rule 15.02, subd. 4 as follows:

Venue transfers in juvenile court are governed by Minnesota Statutes, section ~~260.121~~260B.105.

66. Rule 15.03. Predisposition Reports.

Amend Rule 15.03, subds. 2 and 4 as follows:

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section ~~260.015, subd. 5(a)(1) or (2)~~260B.007, subdivisions 6(a)(1) or (2) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.03, ~~subd.~~subdivision 1.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report ~~twenty-four (24) hours~~three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, ~~counsel for the child's~~ counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child.

67. Rule 15.04. Hearing.

Amend third sentence of Rule 15.04, subd. 1 as follows:

The child and ~~counsel for the child's~~ counsel, if any, shall appear at all disposition hearings.

Amend the last sentence of Rule 15.04, subd. 2 as follows:

Anyone with the right to participate in the disposition hearing pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 2 may call witnesses, subject to cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to the disposition.

68. Rule 15.05. Dispositional Order.

Amend Rule 15.05, subd. 1 as follows:

Subd. 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to Minnesota Statutes, section ~~260.185, subd. 1~~260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent and order a disposition pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198~~, subdivisions 1(a) or (b).

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Amend Rule 15.05, subd. 2(A)(3) as follows:

(3) if the disposition changes the place of custody of the child;

Amend Rule 15.05, subs. 3 and 4 as follows:

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198~~, subdivision 1(c) shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and the protection of the public to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention.* If the child is not held in detention, the court may continue the case without adjudication for a period not to exceed ninety (90) days from the ~~finding that the charges have been proved~~date of disposition. The court may extend the continuance for an additional successive period not to exceed ninety (90) days.

(C) *Child in Detention.* If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the ~~finding that the charges in the charging document have been proved~~date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.03, ~~subd. subdivision~~ 1. The court may extend this continuance and enter an order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance.* During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198~~, subdivisions 1(a) or (b).

(E) *Adjudication after Continuance.* Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.07.

(F) *Termination of Jurisdiction.* A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by ~~Minnesota Rules of Juvenile Procedure~~ 15.05, ~~subd. subdivisions~~ 4 (B) or (C), or juvenile court jurisdiction over the charges terminates.

69. Rule 15.06. Informal Review.

Amend the second paragraph of Rule 15.06 as follows:

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under ~~Minnesota Rules of Juvenile Procedure~~ 15.08, ~~subd. subdivision~~ 8, the court may commence a modification proceeding pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08.

70. Rule 15.07. Probation Violation.

Amend Rule 15.07 as follows:

Subd. 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by ~~Minnesota Rules of Juvenile Procedure~~ Rule 4.014.03, or the court may schedule a review hearing and provide notice of the hearing as provided in ~~Minnesota Rules of Juvenile Procedure~~ Rule 25. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, if any, shall include:

(1) the name, date of birth and address of the child;

(2) the name and address of the child's parent(s), legal guardian, or legal custodian;

(3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and

(4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

Subd. 2. Detention Hearing. If the child is detained pursuant to a warrant for immediate custody, detention is governed by ~~Minnesota Rules of Juvenile Procedure~~ 5.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

(1) for a child in custody, at or before the detention hearing; or

(2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

(1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a

dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial*. If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of ~~Minnesota Rules of Juvenile Procedure 15.07, subd. subdivision 4.~~

Subd. 4. Revocation Hearing.

(A) *Generally*. At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing*. The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved*. If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved*. ~~The timing of dispositional orders in Probation Violation matters is governed by Rule 15.02.~~ If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes, section ~~260.185~~ 260B.198; or

(2) for a child who was previously granted a continuance without adjudication pursuant to ~~Minnesota Rules of Juvenile Procedure 15.05, subd. subdivision 4,~~ adjudicate the child and order a disposition pursuant to Minnesota Statutes, section ~~260.185~~ 260B.198.

Rule 15.02 governs the timing of dispositional orders in probation violation matters.

71. Rule 15.08. Other Modifications.

Amend Rule 15.08, subd. 1 as follows:

Subd. 1. Generally. ~~Minnesota Rules of Juvenile Procedure~~ 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Amend the second sentence of Rule 15.08, subd. 3 as follows:

The motion for modification shall be in writing and shall be served and filed along with accompanying affidavits, if any, in accordance with ~~Minnesota Rules of Juvenile Procedure~~ 27.

Amend Rule 15.08, subds. 5 through 8 as follows:

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying affidavits, if any, whether there is good cause to believe that a modification of the disposition is warranted under ~~Minnesota Rules of Juvenile Procedure~~ 15.08, ~~subd. subdivision~~ 8. If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with ~~Minnesota Rules of Juvenile Procedure~~ 15.08, ~~subd. subdivision~~ 6(A). If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

~~(A)~~ the child has violated the terms of probation or a court order; and:

~~(B)~~ the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

~~(C)~~ the child or others are in danger of imminent harm; or

~~(D)~~ the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing.* Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing.* The modification hearing shall be conducted in accordance with ~~Minnesota Rules of Juvenile Procedure~~ 15.04. The moving party bears the burden of

proving that modification is warranted under ~~Minnesota Rules of Juvenile Procedure~~ 15.08, ~~subd. subdivision~~ 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

- (A) insufficient to restore the child to lawful conduct; or
- (B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with ~~Minnesota Rules of Juvenile Procedure~~ 15.05, ~~subds. subdivisions~~ 2 and 3.

72. Comments to Rule 15

Amend the first through fourth paragraphs of the comments to Rule 15 as follows:

~~Dispositions and revocations~~The disposition for a child who has been designated as extended jurisdiction juvenile are also governed by ~~Minn. R. Juv. P. 19.08 and 19.09~~19.10.

~~Dispositional choices are enumerated in Minnesota Statutes, section 260.185~~260B.198, subds. 1 and 2~~1a. (1994 (2002)). Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. P. 19.11.~~

~~Minn. R. Juv. P. 15.02, subd. 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See, In re the Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re the Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).~~

~~Minnesota Statutes, section 260.121, subd. 2 (1994) authorizes transfer of a juvenile court file to the child's county of residence. This includes files in juvenile delinquency cases, and delinquency files include those where the delinquency petition requires commencement of extended jurisdiction juvenile proceedings under Minnesota Statutes, section 260.126 (Supp. 1995) and Minn.R.Juv.P. 19. See Minn.R.Juv.P. 19.06, subd. 3. When the receiving county has venue because of the child's residence under section 260.121, subd. 1 (1994), the statute provides no right of the receiving court to refuse the transfer. Upon transfer from the county of the child's residence to another county where the child is found, including the county where the offense occurred, the statute provides that the transfer is subject to the consent of the receiving court. Under the statute, the transferring court is to order a continuance and forward a certified copy of all papers filed, together with an order of transfer, to the court administrator of the receiving court. All subsequent proceedings in the transferred file must occur in the county to which the file has been transferred. See Minn.R.Juv.P. 19.06, subd. 3. As a result, in extended juvenile jurisdiction proceedings, the receiving court has venue for purposes of the juvenile disposition, the stayed criminal sentence, and any subsequent proceedings for revocation of the stay of sentence. Minn.R.Juv.P. 19.08 and 19.09. The receiving court may direct the filing of a new petition (or notice to appear in certain cases specified in the statute) or may proceed by accepting prior findings of the transferring court.~~

Amend the first sentence of the fifth paragraph of the comments to Rule 15 as follows:

The juvenile court and court personnel should make every effort to utilize culturally-specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn. R. Juv. P. 15.03.

Amend the last sentence of the sixth paragraph of the comments to Rule 15 as follows:

See Minnesota Statutes, section 260.185, subd. 1c. (Supp. 1995)260B.198, subd. 4 (2002).

Amend the eighth and ninth paragraphs of the comments to Rule 15 as follows:

As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. See: In Re the Welfare of N.W., 405 N.W.2d 512, 516-17 (Minn. Ct. App. 1987) (citing Scheibe v. Scheibe, 241 N.W.2d 100 (Minn. 1976); VanZee v. VanZee, 226 N.W.2d 865 (Minn. 1974); Stanford v. Stanford, 123 N.W.2d 187 (Minn. 1963)).

~~Although the~~The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report, ~~that~~. However, Rules 15.03 and 15.04 ~~does do~~ not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

Amend the first two sentences of the tenth paragraph of the comments to Rule 15 as follows:

Under Minn. R. Juv. P. 15.05, subd. 1, the decision to either adjudicate the child or grant a continuance without adjudication and the choice of disposition shall be made at the same time and in a single dispositional order. Accord Minn. R. Juv. P. 21.03, subd. 1.

Amend the first and last sentences of the eleventh paragraph of the comments to Rule 15 as follows:

Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in In re the Welfare of M.D.S., 514 N.W.2d 308 (Minn. Ct. App. 1994).

Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn. R. Juv. P. 15.05, subd. 1, it should be clear that there can be no appeal of the finding that the allegations of the petition have been proved until after the court enters a dispositional order.

Amend the last sentence of the twelfth paragraph of the comments to Rule 15 as follows:

See: In re the Welfare of G.M., 533 N.W.2d 883, C9-95-812 (Minn. Ct. App. July 3, 1995).

Amend the thirteenth through sixteenth paragraphs of the comments to Rule 15 as follows:

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minnesota Statutes, section ~~260.161, subd. 1a.(a)~~(1994)260B.171, subd. 2(a) (2002).

Minnesota Statutes, section ~~260.185~~260B.198, subd. 1 (1994)(2002) requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures. Minn. R. Juv. P. 15.05, subd. 2(A) reiterates the statutory principle.

Minn. R. Juv. P. 15.05, subd. 2(B) recites some of the general principles relating to dispositions that have developed under Minnesota law.

*a. The content of Minn. R. Juv. P. 15.05, subd. 2(B) is largely derived from Minnesota Statutes, section ~~260.011, subd. 2(e)~~(1994)260B.001, subd. 2 (2002); Minnesota Statutes, section ~~260.185, subd. 1~~(1994)260B.198, subd. 1 (2002); ~~Minnesota Statutes, section 260.185, subd. 1e. (Supp. 1995);~~ *In re Welfare of A.R.W. & Y.C.W.*, 268 N.W.2d 414, 417 (Minn. 1978) *cert. den. denied* 439 U.S. 989 (1978); *In re the Welfare of D.S.F.*, 416 N.W.2d 772 (Minn. Ct. App. 1987) *pet. for rev. denied* (Minn. Feb. 17, 1988); and *In re the Welfare of L.K.W.*, 372 N.W.2d 392 (Minn. Ct. App. 1985). *See also* Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards: Standards Relating to Dispositions* (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by ~~focussing~~*focusing* on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.*

Amend the second and seventh sentences of the seventeenth paragraph of the comments to Rule 15 as follows:

Minnesota Statutes, section ~~260.011~~260B.001, subd. 2(e)(1994)(2002).

Minnesota Statutes, section ~~260.185~~260B.198, subd. 1 (1994)(2002).

Amend the nineteenth through twenty-sixth paragraphs of the comments to Rule 15 as follows:

*Minn. R. Juv. P. 15.05 subd. 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes, section ~~260.185~~260B.198, subd. 1(c) (1994)(2002) shall be for a specified length of time. *See* Minnesota Statutes, section ~~260.185, subd. 4~~(1994)260B.198, subd. 9 (2002).*

*The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes, section ~~260.185~~260B.198, subd. 1(d)(1994)(2002) is determined by the Commissioner. *See, In re the Welfare of M.D.A. v. State*, 237 N.W.2d 827 (Minn. 1975).*

"Withholding of adjudication" ~~has been~~was redesignated as "continuance without adjudication" to conform with the statutory language of Minnesota Statutes, section

260.185, subd. 3 (1994). Continuance without adjudication is now authorized by Minnesota Statutes, section ~~260.185, subd. 3~~260B.198, subd. 7 (2002). The court must find that the allegations of the petition have been proved before it can continue a case without adjudication. Id. The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. Id.

Continuance without adjudication (or withholding of adjudication) has a material ~~effect~~effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines assigned one criminal history point for every two felony-level "juvenile adjudications-." See Minnesota Sentencing Guidelines II.B.4 (1982). In State v. Peterson, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. Id. at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. Minnesota Sentencing Guidelines II.B.4 (~~1994~~2002). Because Minnesota Statutes, section ~~260.185, subd. 3~~260B.198, subd. 7 requires a finding that the juvenile committed the offense alleged in the petition before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et. al. 12 Minnesota Practice at ~~443 (1985)~~215 (1997). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minnesota Statutes, section ~~609.3461, subd. 1(3)(1994)~~609.117, subd. 1(3) (2002) (provision of biological specimens for DNA analysis); and, for offenses committed before August 1, 1996, Minnesota Statutes, section ~~260.161, subd. 1a.(a)(1994)~~ and 1996 Minn. Laws. Ch. 440, Art. 1, Sec. 46 (report of certain juvenile offenses to BCA).

~~Continuance~~A continuance without adjudication ~~and~~or continuance for dismissal under Minn. R. Juv. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. ~~By July 1, 1995, every~~Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes, section 388.24 (~~Supp. 1995~~2002). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

~~Statutory law requires an administrative review of all placements in a residential facility (group home, family foster home, or other publicly supported out-of-home residential facility) every six months. Minnesota Statutes, section 257.071, subd. 2 (1994).~~

Much of Minn. R. Juv. P. 15.07 was taken from Minn. R. Crim. P. 27.04.

Unless all the parties agree to a proposed modification, the court may not order modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn. R. Juv. P. 15.08 in order to give the parties an opportunity to contest the proposed modification before it is imposed.

Amend the first sentence of the twenty-seventh paragraph of the comments to Rule 15 as follows:

Under Minn. R. Juv. P. 15.08, subd. 2, the court is not required to hold a hearing to examine a modification agreement on the record in every case.

Insert a new twenty-eighth paragraph, and amend the remaining paragraphs of the comments to Rule 15 as follows:

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.07.

Minnesota Statutes, section ~~260.145 (1994)~~260B.154 (2002) addresses the court's authority to issue a warrant for immediate custody for the child. Minnesota Statutes, section ~~260.165, subd. 1(d)~~(1994)260B.175, subd. 1(c) addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

Counsel for the child has the right and duty to appear at and participate in all probation revocation and modification proceedings and hearings. See Minn. R. Juv. P. 3.02, subd. 4.

73. Rule 16.04. New Trial on Court's Own Motion.

Amend Rule 16.04 as follows:

The court, on its own motion, may order a new trial upon any of the grounds specified in ~~Minnesota Rules of Juvenile Procedure~~ 16.01, ~~subd.~~subdivision 1 within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

74. Comments to Rule 16.

Amend the comments to Rule 16 as follows:

References to "child's counsel" includes the child who is proceeding pro se. Minn. R. Juv. P. 1.01.

Minn. R. Juv. P. 16.01, subd. 3 provides that notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved, except for a motion for new trial based on the grounds of new evidence. Minnesota Statutes, section ~~260.281~~260B.411 (2002) provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. ~~1996 Minnesota Laws Ch. 408, Art. 6, Sec. 9.~~ There, a child must bring a motion for new trial based on new evidence within fifteen (15) days of the filing of the court's order for adjudication and disposition. Id. Motions for new trial brought on other grounds must be brought within fifteen (15) days after the finding that the allegations of the charging document are proved as provided by this rule. Minn. R. Juv. P. 16.01, subd. 3.

In re Welfare of D.N.; held that a juvenile must move for a new trial to raise an appealable issue on evidentiary rulings. *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), review denied (Minn. Nov. 29, 1994). It should be noted that D.N. was a child in need of protection or services and not a delinquent. The procedures for delinquent children are more closely aligned with the rules of adult criminal court.

75. Rule 17.01. Scope, Application and General Purpose.

Amend Rule 17.01 as follows:

~~Minnesota Rules of Juvenile Procedure~~ 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes, section ~~260.015, subd. 21~~260B.007, subdivision 16 or juvenile traffic offenders as defined by Minnesota Statutes, section ~~260.193~~260B.225. The purpose of ~~Minnesota Rules of Juvenile Procedure~~ 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense, except as provided in Rule 3.02, subd. 5. Except as otherwise provided in this rule, the general rules of juvenile delinquency procedure apply to juvenile petty and juvenile traffic matters.

Subd. 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16.

~~(A) Juvenile Petty Offense.~~ A juvenile petty offense is

~~(1) a juvenile alcohol offense;~~

~~(2) a juvenile controlled substance offense;~~

~~(3) a juvenile tobacco offense;~~

~~(4) a violation of local ordinance which prohibits conduct by a child under age eighteen (18);~~

~~(5) a non-traffic misdemeanor level offense except for the following:~~

~~(a) criminal contempt (Minnesota Statutes, section 588.20);~~

~~(a) fifth-degree assault (Minnesota Statutes, section 609.224);~~

~~(b) domestic assault (Minnesota Statutes, section 609.2242);~~

~~(c) prostitution, soliciting/hiring a prostitute (Minnesota Statutes, section 609.324);~~

~~(d) third-degree arson (Minnesota Statutes, section 609.563);~~

~~(e) negligent fires, dangerous smoking (Minnesota Statutes, section 609.576);~~

~~(f) dangerous weapons (Minnesota Statutes, section 609.66); or~~

~~(g) indecent exposure (Minnesota Statutes, section 617.23).~~

~~(B) Excluded.~~ The following are not juvenile petty offenses:

~~(1) a traffic offense;~~

~~(2) a misdemeanor level offense if the juvenile court previously found that the child committed a misdemeanor, gross misdemeanor or felony; or~~

~~(3) a misdemeanor level offense if the juvenile court previously found that the child committed two or more prior misdemeanor level juvenile petty offenses on or after July 1, 1995.~~

~~(C) Designation as Juvenile Petty Offender by Prosecuting Attorney.~~ The prosecuting attorney may designate a child a juvenile petty offender despite the child's

history of misdemeanor-level offenses under Minnesota Rules of Juvenile Procedure 17.01, subd. 1(B)(3).

Subd. 2. Juvenile Traffic Offender. A juvenile traffic offender is any child alleged to have committed a traffic offense except those children under the jurisdiction of adult court as set forth below in Minnesota Rules of Juvenile Procedure 17.01, subd. 3 provided in Minnesota Statutes, section 260B.225.

(A) *Traffic Offense.* A traffic offense is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.

Subd. 3. Children Under Jurisdiction of Adult Traffic Court. A sixteen (16) or seventeen (17) year old child alleged to have committed one of the following offenses is under the jurisdiction of adult criminal court:

(A) a violation of Minnesota Statutes section 169.121 (drivers under the influence of alcohol or controlled substance) or Minnesota Statutes, section 169.129 (aggravated driving while intoxicated) or any other misdemeanor and gross misdemeanor level traffic violations committed as part of the same behavioral incident; or

(B) a petty traffic misdemeanor which is not a part of the same behavioral incident of a misdemeanor being handled in juvenile court.

76. Rule 17.02. Attendance at Hearings and Privacy.

Repeal former Rule 17.02.

77. Rule 17.03. Right to Counsel.

Renumber Rule 17.03 as Rule 17.02 and amend subdivisions 1 and 3 as follows:

Rule 17.0317.02 Right to Counsel

Subd. 1. Generally. ~~A child alleged to be~~In any proceeding in which a child is charged as a juvenile petty offender or a juvenile traffic offender, the child or the child's parent may retain private counsel, has the right to be represented by an attorney at any point throughout the proceedings but the child does not have ~~the~~a right to counsel at public expense, except:

(A) ~~at a detention hearing~~when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(B) ~~in a proceeding to determine whether the child is competent to proceed~~as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

(C) ~~where a child charged with a misdemeanor offense is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17.01, subd 1(C).~~

(D) ~~where out-of-home placement is a possible disposition such as under Minnesota Statutes § 260.195, subd. 4 for a child appearing on a third or subsequent juvenile alcohol or controlled substance offense. If the child is not represented by counsel, out-of-home placement is prohibited.~~

Subd. 3. For Appeal. A child adjudicated a juvenile petty offender or juvenile traffic offender does not have the right to counsel at public expense for the purposes of

appeal except at the discretion of the Office of the State Public Defender as set out in ~~Minnesota Rules of Juvenile Procedure 21.02, subd. subdivision 2.~~

78. Rule 17.04. Warrants.

Renumber Rule 17.04 as Rule 17.03 and amend as follows:

Rule ~~17.04~~17.03 Warrants

~~Governed~~The issuance of warrants under this Rule is governed by Minnesota Rules of Juvenile Procedure 4 ("Warrants"). ~~except that the court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:~~

~~— (A) the child has committed a juvenile petty offense as defined by Minnesota Statutes, section 260.015, subd. 21 or a juvenile traffic offense as defined by Minnesota Statutes, section 260.193; and~~

~~— (B) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.~~

79. Rule 17.05. Detention.

Repeal former Rule 17.05.

80. Rule 17.06. The Charging Document and Notice of Arraignment.

Renumber Rule 17.06 as Rule 17.04 and amend as follows:

Rule ~~17.06~~17.04 The Charging Document and Notice of Arraignment

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to ~~Minnesota Rules of Juvenile Procedure 6 ("Charging Document")~~ with proper notice given pursuant to ~~Minnesota Rules of Juvenile Procedure 25 ("Notice")~~. The time for an arraignment shall be the same as that for a delinquency proceeding.

81. Rule 17.07. Arraignment.

Renumber Rule 17.07 as 17.05 and amend subdivisions 1 through 3 as follows:

Rule ~~17.07~~17.05 Arraignment

Subd. 1. Generally. An arraignment is a hearing in which a child shall enter a plea of guilty or not guilty in the manner provided in ~~Minnesota Rules of Juvenile Procedure 17.08~~ 17.06.

Subd. 2. Timing. Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~. The time for an arraignment shall be the same as that for a delinquency proceeding, that is;

(A) *Child in Custody.* The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(B) *Child Not in Custody.* The child not in custody shall be arraigned ~~within twenty (20) days after the child has been served with~~ no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 3. Hearing Procedure. Children alleged to be juvenile petty offenders or juvenile traffic offenders may be arraigned as a group and shall be arraigned individually and confidentially upon request. At the start of the arraignment, the court shall inform the child(ren) of the following rights and possible dispositions:

(A) the right to remain silent;

(B) the right to counsel at any point throughout the proceedings ~~but not the, including the limited right to the~~ appointment of counsel at public expense;

(C) the right to plead not guilty and have a trial in which the child is presumed innocent unless and until the prosecuting attorney proves the allegations beyond a reasonable doubt;

(D) the right of the child to testify on the child's own behalf;

(E) the right to call witnesses using the court's subpoena powers;

(F) *For a Juvenile Petty Offender.*

(1) the dispositions that may be imposed pursuant to Minnesota Statutes ~~§ 260.195, subs. 3, 3a and 4,~~ section 260B.235, subdivisions 4, 5 and 6 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt; and

(2) if the offense is a second misdemeanor-level petty offense, the possibility that any same or similar offense will be charged as a misdemeanor in a delinquency petition;

(G) *For a Juvenile Traffic Offender.* The dispositions that may be imposed pursuant to Minnesota Statutes, section ~~260.193, subd. 8~~ 260B.225, subdivision 9 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt.

82. Rule 17.08. Pleas.

Renumber Rule 17.08 as Rule 17.06 and amend as follows:

Rule ~~17.08~~17.06 Pleas

Subd. 1. Plea of Guilty. Before the court accepts a plea of guilty, the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written plea petition if the child is represented by counsel, determine:

(A) whether the child understands:

(1) the nature of the offense alleged;

(2) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(3) the right to trial;

(3)(4) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt; ;
(4)(5) the right to remain silent; ;
(5)(6) the right to testify on the child's own behalf; ;
(6)(7) the right to confront witnesses against oneself; ;
(7)(8) the right to subpoena witnesses; ;
(8)(9) that the child's conduct constitutes ~~the act admitted~~ the offense to which the child pled guilty;

(B) whether the child makes any claim of innocence; and

(C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

Subd. 2. Plea of Not Guilty. Upon a plea of not guilty, the matter shall be set for trial and the court shall advise the child of the discovery procedures as set forth in ~~Minnesota Rules of Juvenile Procedure 17.10~~ 17.07.

Subd. 3. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, for any just reason; or

(B) at any time, if out-of-home placement is proposed based upon a plea or adjudication obtained without the assistance of counsel; or

(C) ~~at any time~~ after disposition, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 4. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of a lesser degree; ;

or

(B) a plea of guilty to a different offense than that alleged in the charging document.

A plea of guilty to a lesser included offense or to an offense of a lesser degree may be entered without an amendment of the charging document. If a plea to different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 5. Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings. The court shall make a finding within fifteen (15) days of the plea of guilty:

(A) that the plea has been accepted and the allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document have been proved, the court shall schedule further proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 17.14 ("Adjudication and Disposition")~~ 17.09.

83. Rule 17.09. Settlement Discussions and Plea Agreements.

Repeal former Rule 17.09.

84. Rule 17.10. Discovery.

Renumber Rule 17.10 as Rule 17.07 and amend as follows:

Rule ~~17.10~~17.07 Discovery

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 10~~ ("Discovery"). Otherwise discovery shall proceed as follows: The prosecuting attorney shall, as soon as possible, provide the child with copies of statements and police reports. At least ten (10) days before trial, the parties shall exchange the names of witnesses they intend to have testify at trial as well as exhibit lists.

85. Rule 17.11 Pretrial and Omnibus Hearing.

Renumber Rule 17.11 as Rule 17.08 and amend as follows:

Rule ~~17.11~~17.08 Pretrial and Omnibus Hearing

Upon request of either party, the court shall hold a pretrial and/or an omnibus hearing in the manner provided for delinquency proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 11~~ ("Pretrial Conference") and ~~Minnesota Rules of Juvenile Procedure 12~~ ("Omnibus Hearing").

86. Rule 17.12. Trial.

Repeal former Rule 17.12

87. Rule 17.13. Continuance for Dismissal.

Repeal former Rule 17.13.

88. Rule 17.14. Adjudication and Disposition.

Renumber Rule 17.14 as Rule 17.09 and amend subdivisions 2-4 as follows:

Rule ~~17.14~~17.09 Adjudication and Disposition

Subd. 2. Adjudication and Disposition.

Within forty-five (45) days from the finding that the allegations of the charging document are proved, the court shall:

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes, section ~~260.195, subds. 3, 3a and 4~~ 260B.235, subdivisions 4, 5, and 6.

(B) *For a Juvenile Traffic Offender.* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes, section ~~260.193, subd. 8~~ 260B.225, subdivision 9.

The order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

Subd. 3. Probation Revocation. Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.07 except for the following:

(A) *Warrant.* The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that: the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

(B) *Advisory.* Prior to the child admitting or denying the allegations in the probation violation report, the court shall advise the child of the following:

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel ~~appointed~~ at public expense, unless the child is subject to out-of-home placement;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may order a disposition pursuant to Minnesota Statutes, section ~~260.195, subd. 3, 3a or~~ 260B.235, subdivisions 4, 5, and 6 for a juvenile petty offender or a disposition pursuant to Minnesota Statutes, section ~~260.193, subd. 8~~ 260B.225, subdivision 9 for a juvenile traffic offender.

Subd. 4. Other Modifications. Other modification proceedings shall be conducted in the same manner as delinquency modification proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08 except that the court may not order a delinquency disposition. For a juvenile petty offender, the court may order a disposition pursuant to Minnesota Statutes, section ~~260.195, subs. 3, 3a and 4~~ 260B.235, subdivisions 4, 5, and 6 and for a juvenile traffic offender, the court may order a disposition pursuant to Minnesota Statutes, section ~~260.195, subd. 8~~ 260B.225, subdivision 9. The modification order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

89. Rule 17.15. Post Trial Motions.

Repeal former Rule 17.15.

90. Rule 17.16. Transfer to Adult Court of Juvenile Traffic Matter.

Renumber Rule 17.16 as Rule 17.10

Rule ~~17.16~~17.10 Transfer to Adult Court of Juvenile Traffic Matter

91. Child Incompetent to Proceed.

Renumber Rule 17.17 as Rule 17.11 and amend as follows:

Rule ~~17.17~~17.11 Child Incompetent to Proceed

If a child is believed to be incompetent to proceed, the court may ~~either~~ proceed according to ~~Minnesota Rules of Juvenile Procedure 20 ("Child Incompetent to Proceed")~~, direct that civil commitment proceedings be initiated, direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case.

92. Rule 17.18. Appeals.

Repeal former Rule 17.18.

93. Rule 17.19. General Applications of Other Rules.

Repeal former Rule 17.19.

94. Comments to Rule 17.

Amend the comments to Rule 17 as follows:

In 1995, the legislature expanded the definition of "juvenile petty offense." Pursuant to Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995), a juvenile petty offense ~~includes~~included the following:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of section 609.685;

(d) a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult;

(e) an offense, other than a violation of section 609.224, 609.324, 609.563, 609.576, or 617.23, that would be a misdemeanor if committed by an adult if:

(1) the child has not been found to be a juvenile petty offender on more than two prior occasions for a misdemeanor-level offense;

(2) the child has not previously been found to be delinquent for a misdemeanor, gross misdemeanor, or felony offense; or

(3) the county attorney designates the child on the petition as a juvenile petty offender, notwithstanding the child's prior record of misdemeanor-level juvenile petty offenses. Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995).

This definition of juvenile petty offense ~~applies~~applied to crimes committed on or after July 1, 1995. 1995 Minn. Laws Ch. 226, Art. 3, Sec. 65.

In 1996, the legislature again revised the definition of "juvenile petty offense." Pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1, a juvenile petty offense ~~includes~~included:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of section 609.685;

(d) a violation of local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult; and

(e) an offense that would be a misdemeanor if committed by an adult, except:

(1) a misdemeanor-level violation of section 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, or 617.23;

(2) a major traffic offense or an adult court traffic offense, as described in section 260.193;

(3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

(4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" ~~includes~~included a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1.

This definition of juvenile petty offense ~~applies~~applied to crimes committed on or after August 1, 1996. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 13. Minn. R. Juv. P. 17.01, subd. 1 ~~reflects~~reflected the definition of "juvenile petty offense" set forth pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. However, because this definition often changed, Rule 17.01, subd. 1 now refers to the applicable statute. See Minnesota Statutes, section 260B.007, subd. 16 (2002).

The legislature reorganized the law relating to juvenile delinquency and child protection in 1999. 1999 Minn. Laws Ch. 139. This recodification is found in Minnesota Statutes, sections 260B.001-260B.446 for juvenile delinquency.

Minnesota Statutes, section ~~260.193~~260B.225, subd. 2 ~~(1994)~~(2002) provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. ~~Minnesota Statutes, section 260.193, subd. 2 (1994).~~ Such matter shall be initiated and shall proceed in the same manner as any other delinquency. ~~Id.~~

At the arraignment, the court may inform ~~the child (ren)~~each child of their his or her rights and the possible consequences by reading and having each child sign a sheet

outlining ~~their~~ those rights. A suggested form for this rights sheet is included in the appendix of forms, following these rules.

~~Minn. R. Juv. P. 17.16~~17.10 is based on Minnesota Statutes, section ~~260.193~~260B.225, subd. 7 (1994)(2002), which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

The right to appeal is set forth in Minnesota Statutes, section ~~260.291~~ (Supp. 1995)260B.415, subd. 1 (2002).

95. Rule 18. Certification of Delinquency Matters.

Insert new Rule 18.01 as follows:

Rule 18.01 Application

Subd. 1. Generally. This rule is applicable when the prosecutor moves for certification and a child is alleged to have committed, after becoming fourteen (14) years of age, an offense that would be a felony if committed by an adult.

Subd. 2. First Degree Murder Accusation. The district court has original and exclusive jurisdiction in criminal proceedings concerning a child alleged to have committed murder in the first degree after becoming sixteen (16) years of age. Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult proceedings with the offense of first degree murder, juvenile court jurisdiction terminates for all proceedings arising out of the same behavioral incident.

96. Rule 18.01. Initiation of Certification Proceedings of Delinquency Matters.

Renumber Rule 18.01 as Rule 18.02 and amend as follows:

Rule ~~18.01~~18.02 Initiation of Certification Proceedings of Delinquency Matters

Subd. 1. Generally. Proceedings to certify delinquency matters pursuant to Minnesota Statutes, section ~~260.125~~260B.125 may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to ~~Minnesota Rules of Juvenile Procedure 5 or 7;~~ 2 or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first. The motion shall be in writing and comply with the provisions of Rule 27, and shall include a statement of the grounds supporting the certification.

~~The motion shall be in writing and comply with the provisions of Minnesota Rules of Juvenile Procedure 27, and shall include a statement of the grounds supporting the certification. Within ten (10) days after the motion is made, the prosecuting attorney shall file with the court a statement of intent to prosecute the accusation if the proceedings are certified, which statement shall be signed by the prosecutor in the county which has jurisdiction over the offense. The court shall dismiss the certification motion if the statement of intent to prosecute is not timely filed.~~

Subd. 2. First Degree Murder Accusation. When the delinquency petition that is the basis for the motion for certification alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present

the case to the grand jury for consideration of an indictment under Minnesota Statutes, chapter 628 within fourteen (14) days after the petition is filed.

97. Rule 18.02. Notice of Certification.

Renumber Rule 18.02 as Rule 18.03 and amend as follows:

Rule ~~18.02~~18.03 Notice of Certification

Notice of the initial appearance under ~~Minnesota Rules of Juvenile Procedure, 18.04 subd. 18.05, subdivision~~ 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

98. Rule 18.03. Certification Study.

Renumber Rule 18.03 as Rule 18.04 and amend subdivisions 2, 4 and 5 as follows:

Rule ~~18.03~~18.04 Certification Study

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions; (a) the report shall address each of the public safety considerations of ~~Minnesota Rules of Juvenile Procedure 19.05, subd. 18.06, subdivision~~ 3; and (b) the report shall address all options of the trial court under ~~Minn. R. Juv. P. 18.06~~ Rule 18.07, namely; (i) certification; (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in non-presumptive certification cases.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays and legal holidays, prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

Subd. 5. Admissibility. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child ~~regarding the issue of guilt~~ in any subsequent trial.

99. Rule 18.04. Hearing.

Renumber Rule 18.04 as Rule 18.05. Amend the second sentence of subdivision 1(A) as follows:

The court shall open the hearings to the public in certification proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

Amend the last sentence of Rule 18.04, subdivision 1(B) as follows:

Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under ~~Minnesota Rules of Juvenile Procedure~~ 5.

Amend subdivision 1(D) as follows:

(D) *Discovery*. The child and prosecuting attorney are entitled to discovery pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.

Amend subdivision 2 as follows:

Subd. 2. Initial Appearance in Certification Proceeding. At the initial appearance following the motion for certification the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;;

(B) determine whether all necessary persons are present and identify those present for the record;;

(C) appoint counsel, if not previously appointed;;

(D) determine whether notice requirements have been met and if not whether the affected persons waive notice;;

(E) schedule further hearings including: a probable cause hearing, unless waived; the certification hearing under ~~Minnesota Rules of Juvenile Procedure 18.04, subd. 18.05~~ subdivision 4; and a pre-hearing conference if requested; and

(F) order studies pursuant to ~~Minnesota Rules of Juvenile Procedure 18.03~~ 18.04, if appropriate.

Amend subdivision 3(C) as follows:

(C) *Presumption*. Upon a finding of probable cause, the court shall determine whether the presumption for certification under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 1~~ applies.

Amend subdivision 4(E) as follows:

Amend subdivision 4(E) as follows:

(E) *Burdens of Proof*. In a presumptive certification hearing under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 1~~, the child shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. In non-presumptive certification hearings under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 2~~, the prosecuting attorney shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

100. Rule 18.05. Certification Determination.

Renumber Rule 18.05 as Rule 18.06 and amend subdivisions 1, 4 and 5 as follows:

Rule ~~18.05~~18.06 Certification Determination

Subd. 1. Presumption of Certification. Pursuant to Minnesota Statutes, section ~~260.125, subd. 2a. (1994)~~260B.125, subdivision 3, it is presumed that a child will be certified for action under the laws and court procedures controlling adult criminal violations if:

(A) the child was sixteen (16) or seventeen (17) years old at the time of the offense;

(B) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(C) probable cause has been determined pursuant to ~~Minnesota Rules of Juvenile Procedure 18.04 subd. 18.05, subdivision 3.~~

The presumption of certification is overcome ~~if it is rebutted by the child's showing of if the child demonstrates by~~ clear and convincing evidence ~~demonstrating~~ that retaining the proceedings in juvenile court serves public safety.

Subd. 4. Prior Certification. The court shall order certification in any felony case if the prosecutor shows that the child was previously prosecuted and convicted in adult proceedings that were certified pursuant to Minnesota Statutes, section ~~260.125, subd. 3a,~~260B.125, subdivision 5.

Subd. 5. Extended Juvenile Court Jurisdiction.

(A) *Presumptive Certification.* If the juvenile court does not order certification in a presumptive certification case in which certification is presumed, the court shall designate the proceeding an extended jurisdiction juvenile prosecution.

(B) *Non-presumptive Certification.* If the court does not order certification in a non-presumptive certification case in which certification is not presumed, the court may consider designating the proceeding an extended jurisdiction juvenile prosecution. Designation as an extended jurisdiction juvenile prosecution may only occur if the prosecuting attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 3.~~ Absent this showing the case shall proceed as a ~~regular~~ delinquency proceeding in juvenile court.

101. Rule 18.06. Order.

Renumber Rule 18.06 as Rule 18.07 and amend as follows:

Rule ~~18.06~~18.07 Order

Subd. 1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order. When a child waives the right to a certification hearing and stipulates to entry of a certification order, the court shall,

within five (5) days of that hearing, enter an order with written findings of fact and conclusions of law that state:

(A) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(B) a finding of probable cause in accordance with Rule 18.05, subdivision 3, unless the accusation was presented by means of an indictment;

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense; and

(D) if the child is currently being detained, that:

(1) the child be detained in an adult detention facility; and

(2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after issuance of the certification order, exclusive of the day of issuance, Sundays, or legal holidays, or as soon thereafter as a judge is available.

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the certification hearing the court shall enter an order with written findings of fact and conclusions of law as set forth in this subdivision.

(A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:

(1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(2) a finding of probable cause in accordance with ~~Minnesota Rules of Juvenile Procedure 18.04, subd. 18.05, subdivision 3~~ unless the accusation was presented by means of an indictment;

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense;

(c) why the court upheld the presumption of certification under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 1~~ or, if the presumption of certification does not apply but the court orders certification, why public safety, as defined in ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 3~~, is not served by retaining the proceeding in juvenile court; and

(4) if the child is currently being detained, that (a) the child be detained in an adult detention facility, and (b) the child be brought before the appropriate court (as determined pursuant to ~~Minnesota Rules of Juvenile Procedure 18.07~~18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after issuance of the certification order, exclusive of the day of issuance, Sundays or legal holidays or as soon thereafter as a judge is available.

(B) *Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile.*

(1) If the court does not order certification in a presumptive certification case ~~where the presumption of certification applies~~, the court shall designate the proceeding an extended jurisdiction juvenile ~~ease~~prosecution. The order shall state why certification is not ordered with specific reference as to why designation as an extended jurisdiction juvenile prosecution serves public safety under the factors listed in ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 3~~.

(2) If the court does not order certification in a non-presumptive certification case where the presumption of certification does not apply, the court may designate the proceeding an extended jurisdiction juvenile case prosecution pursuant to Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 5(B). The order shall state why certification was not ordered and why the proceeding was designated as an extended jurisdiction juvenile prosecution.

If the court designates the case as an extended jurisdiction juvenile proceeding prosecution, the case shall proceed pursuant to Minnesota Rules of Juvenile Procedure 19.07 19.09.

(C) *Retention of Jurisdiction by Juvenile Court.* If the court ~~decides~~ does not to order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 3. Further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7.

(D) *Time Spent in Custody.* ~~Upon ordering certification or retention as an extended jurisdiction juvenile proceeding, the court shall designate the time spent by the child in custody in connection with the offense or behavioral incident on which further proceedings are to occur. Such time shall be automatically deducted from a subsequent sentence in compliance with the provisions of Minnesota Rules of Criminal Procedure 27.03, subd. subdivision 4(B).~~

Subd. 23. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not entered within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Minnesota Rules of Juvenile Procedure 5.

Subd. 34. Final Order. ~~This order shall constitute~~ Any order issued pursuant to this rule is a final order.

102. Rule 18.07. Termination of Jurisdiction Upon Certification.

Renumber Rule 18.07 as Rule 18.08 and amend subdivisions 2 and 3 as follows:

Rule ~~18.07~~18.08 Termination of Jurisdiction Upon Certification

Subd. 2. Child in Detention. If the child is detained at the time certification is ordered:

(A) If the alleged offense was committed in the same county where certification is ordered, juvenile court jurisdiction terminates immediately and the prosecuting attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to Minnesota Rules of Juvenile Procedure 18.06, subd. 1(A)(4) 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in ~~ten (10)~~ five (5) days or before if the

prosecuting attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Procedure 5.05 and 6; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

Subd. 3. Stay. Notwithstanding the preceding provisions of subdivisions 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivision~~ 3.

103. Rule 18.08. First Degree Murder Accusation.

Repeal former Rule 18.08.

104. Rule 18. Certification of Delinquency Matters.

Insert new Rule 18.09 as follows:

Rule 18.09 Withdrawal of Waiver of Certification Hearing

Subd. 1. General Procedure. A child may bring a motion to withdraw the waiver of certification hearing and stipulation to certification order:

(A) within fifteen (15) days of the filing of the order for certification, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the certification order. A motion shall also be filed for a stay of proceedings in the adult court to which the case was certified.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of waiver:

(A) the waiver was not knowingly, voluntarily, and intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal of waiver is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of certification hearing: 1) the court shall vacate the order for certification, and proceedings will resume in juvenile court pursuant to Rule 18; and 2) the court shall review the order for custody or conditions of release. If the court denies the motion to withdraw the waiver for certification hearing, the certification order shall remain in effect, and proceedings will resume in adult court.

105. Comments to Rule 18.

Amend the comments to Rule 18 as follows:

~~The 1983 juvenile rules contemplate bringing a petition for reference (now "certification") after a petition for delinquency has been filed but before the arraignment occurs. *In re Welfare of J.G.B.*, 443 N.W.2d 867, 871 (Minn. Ct. App. 1989) (reference petition after arraignment was reason for delay that weighed against prosecution in speedy trial analysis).~~

Pursuant to Minnesota Statutes, section ~~260.125, subd. 3b.~~ (1994)260B.125, subd. 6(2002), on a proper motion, the court may hold a certification hearing for an adult charged with a juvenile offense if:

(1) the adult was alleged to have committed an offense before his or her 18th birthday; and

(2) a petition was timely filed under Minnesota Statutes, sections ~~260.131~~260B.141 (2002) and 628.26 (~~Supp. 1995~~2002). The court may not certify the matter if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage. Minn. Stat. § 260B.125, subd. 6 (2002); ~~See also *In the Matter of the re Welfare of A.N.J.*, 521 N.W.2d 889, 891 (Minn. Ct. App. 1994).~~ Juvenile court retains jurisdiction to hear a ~~reference~~certification motion filed after the child's 19th birthday provided a delinquency petition has been timely filed and the delay was not the result of an improper state purpose.

~~The statement of intent to prosecute in Minn.R.Juv.P. 18.01 may be included in the motion for certification if the county which has jurisdiction over the offense is the same county where the motion for certification is filed.~~

Much of the text of Minn. R. Juv. P. ~~18.04~~18.05 subd. 1(A) is taken from Minnesota Statutes, section ~~260.155~~ (1994)260B.163 (2002).

The sanction for delay in Minn. R. Juv. P. ~~18.04~~18.05, subd. 1(B) and ~~18.06~~18.07, subd. ~~23~~ is modeled after Minn. R. Crim. P. 11.10. See *In re Welfare of J.J.H.*, 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also *McIntosh v. Davis*, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available, mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

On continuation questions under Minn. R. Juv. P. ~~18.04~~18.05, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn. R. Juv. P. ~~18.04~~18.05, subd. 1(C) is taken from the 1983 version of Minn. R. Juv. P. 15.03.

Minn. R. Juv. P. ~~18.04~~18.05, subd. 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes, section ~~260.155, subd. 4b.~~ (1994)260B.163, subd. 7 (2002) the custodial parent or guardian of the child who is the subject of the certification proceedings must accompany the child at each hearing, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes, section ~~260.145~~ (1994)260B.154 (2002).

Much of the content of Minn. R. Juv. P. ~~18.04~~18.05, subd. 3 is modeled after Minn. R. Crim. P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.03. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. P. ~~18.04~~18.05, subd. 3 and ~~18.06~~18.07, subd. ~~4~~2(A)(2) eliminate the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree murder in adult proceedings. See Minnesota Statutes, section ~~260.015, subd. 5 (1994)~~260B.007, subd. 6 (2002). Minn. R. Juv. P. ~~18.04~~18.05, subd. 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. P. ~~18.04~~18.05 does not address the consequences of the child's testimony at a hearing. See Simmons v. United States, 390 U.S. 377 (1968) and State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

When a child waives probable cause solely for the purpose of certification, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. P. ~~18.04~~18.05, subd. 4(C) or (D), the adverse party may move the court for directed relief on the grounds that the burden of proof has not been met by the evidence presented.

The determination under Minn. R. Juv. P. ~~18.05~~18.06, subd. 1 whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines. The public safety factors listed in Rule 18.06, subd. 3 mirror those set forth in Minnesota Statutes, section 260B.125, subd. 4 and eliminate the need for non-offense related evidence of dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Under Minnesota Statutes, sections ~~260.111, subd. 1a., 260.015, subd. 5(b) and 260.125, subd. 7 (1994)~~260B.101, subd. 2, 260B.007, subd. 6(b), and 260B.125, subd. 10 (2002), the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive jurisdiction of the juvenile court, but subject to action of the juvenile court on any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

Under Minn. R. Crim. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. State v. Behl, 564 N.W.2d 560

(Minn. 1997). As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

Minn. R. Juv. P. 18.0818.02, subd. 2 repeats the procedural requirement stated in Minnesota Statutes, section 260.125, subd. 6 (1994)260B.125, subd. 9 (2002).

Rule 18 previously contained a provision that allowed jail credit for time spent in custody in connection with the offense or behavioral incident on which further proceedings are to occur. See Minn. R. Juv. P. 18.06, subd. 1(D) (repealed 2003). That provision was deleted because jail credit is awarded at the time of sentencing in adult court, and is thus governed by the Minnesota Rules of Criminal Procedure, not the Minnesota Rules of Juvenile Procedure. See Minn. R. Crim. P. 27.03, subd. 4(B).

106. Rule 19.01. Initiation of Extended Jurisdiction Juvenile Proceedings.

Amend the title and text of Rule 19.01 as follows:

Rule 19.01 Initiation of Extended Jurisdiction Juvenile Proceedings and Prosecution

Subd. 1. Authority. ~~Extended jurisdiction juvenile proceedings are initiated pursuant to Minnesota Statutes, section 260.126 and Minnesota Rules of Juvenile Procedure 19. Jurisdiction of the juvenile court may continue until the child's twenty first (21st) birthday.~~ Extended jurisdiction juvenile prosecutions are initiated pursuant to Minnesota Statutes, sections 260B.125 and 260B.130, Rule 18.06, subdivisions 5(A) and (B), and Rule 19.

Subd. 2. Definitions.

(A) "Extended jurisdiction juvenile" is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes, section ~~260.185~~260B.198, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday.

(B) "Extended jurisdiction juvenile proceeding" includes the process to determine whether a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile proceedings may be initiated pursuant to Rule 19.01, subdivisions 3 and 4.

(C) "Extended jurisdiction juvenile prosecution" includes the trial, disposition, and subsequent proceedings after the determination that a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile prosecutions may be initiated pursuant to Rule 19.06.

Subd. 3. Designation by Prosecuting Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to ~~Minnesota Rules of Juvenile Procedure 6:~~

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and would, if committed by an adult, be a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(B) the prosecuting attorney designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be made at the time the petition is filed, and may be withdrawn by the prosecuting attorney any time before jeopardy attaches.

Subd. 4. Motion by Prosecuting Attorney. The prosecuting attorney may make a written motion pursuant to this Minnesota Rules of Juvenile Procedure 27 to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Minnesota Rules of Juvenile Procedure 6 alleging a felony offense committed after the child's fourteenth (14th) birthday. The motion may be made at the first appearance on the delinquency petition, or within ten (10) days after the first appearance pursuant to Minnesota Rules of Juvenile Procedure 5 and 7 or before jeopardy attaches, whichever of the later two occurs first.

107. Rule 19.02. Notice of the Extended Jurisdiction Juvenile Proceeding.

Amend Rule 19.02 as follows:

A notice of the initial appearance under Minnesota Rules of Juvenile Procedure 19.04, subd. subdivision 2, together with a copy of the petition and designation, or a copy of the motion and petition, shall be served pursuant to Minnesota Rules of Juvenile Procedure 25.

108. Rule 19.03. Extended Jurisdiction Juvenile Study.

Amend Rule 19.03, subds. 2 and 4 as follows:

Subd. 2. Content of Reports. If study reports include a recommendation on the court's actions, the report shall address each of the public safety considerations of Minn.R.Juv.P.Rule 19.05 ~~that is germane to the case.~~

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The report shall otherwise be confidential.

109. Rule 19.04. Hearings on Extended Jurisdiction Juvenile Proceedings.

Amend Rule 19.04 , subds. 1 and 2 as follows:

Subd. 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court including victims. The court shall open the hearings to the public in extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a extended jurisdiction juvenile proceedings hearing to

consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The contested hearing to determine whether the matter will be an extended jurisdiction juvenile proceeding hearing prosecution shall be held within thirty (30) days of:

(1) ~~the filing of the petition designating an extended jurisdiction juvenile prosecution; or~~

(2) the filing of the extended jurisdiction juvenile proceeding motion.

Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for the contested hearing for up to an additional sixty (60) days.

(C) *Waiver.* The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.

Subd. 2. Initial Appearance and Probable Cause Determination.

(A) *Timing.* Unless waived by the child, or based upon an indictment, an initial appearance and court determination on the issue of probable cause shall be completed within fourteen (14) days of the filing of the petition designating an extended jurisdictional juvenile ~~prosecution proceeding~~ or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause. ~~If witnesses are to be called, the court may continue the hearing.~~

(B) At the initial appearance hearing, the court shall:

(1) verify the name, age, race, and residence of the child who is the subject of the matter;;

(2) determine whether all necessary persons are present, and identify those persons for the record;;

(3) appoint counsel if not previously appointed;;

(4) determine whether notice requirements have been met and if not whether the affected persons waive notice;;

(5) schedule further hearings including: a probable cause hearing, unless waived; the contested hearing required by ~~Minnesota Rules of Juvenile Procedure~~ 19.04, ~~subd. 4 subdivision 3~~; and a pre-hearing conference if requested; and

(6) order studies pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 19.03, if appropriate.

(C) *Offense Probable Cause.* A showing of probable cause to believe that the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(D) *Designation Probable Cause.* If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile ~~prosecution proceeding~~ pursuant to Rule 19.01, subdivision 3 and the court finds that:

(1) probable cause exists for an offense that, if committed by an adult, would be a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes or alleges a felony offense in which the child allegedly used a firearm; and

(2) the child was at least sixteen (16) years old at the time of the offense, the court shall order that the matter proceed as an extended jurisdiction juvenile prosecution pursuant to ~~Minnesota Rules of Juvenile Procedure 19.07~~19.09.

(E) *Waiver*. The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Amend the title to Rule 19.04, subd. 3 as follows:

Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing.

Amend Rule 19.04, subd. 3(D) as follows:

(D) *Burdens of Proof*. The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 19.05.

110. Rule 19.05. Extended Jurisdiction Juvenile Prosecution.

Amend the title and text of Rule 19.05 as follows:

Rule 19.05 Extended Jurisdiction Juvenile Prosecution Public Safety Determination

~~The court may order a case to proceed as an extended jurisdiction juvenile prosecution if the~~In determining whether public safety would be served, ~~taking~~the court shall take into account the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, ~~or~~and the impact on the victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

111. Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

Add new Rule 19.06 as follows:

Rule 19.06 Extended Jurisdiction Juvenile Prosecution Determination

Subd. 1. Extended Jurisdiction Juvenile Prosecution Required. The court shall designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a presumptive certification case pursuant to Minnesota Statutes, section 260B.125, subdivision 3:

(1) when the court finds, after a contested hearing pursuant to Rule 18.05, that the child has shown by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety pursuant to Rule 18.06, subdivision 3; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate; or

(B) following designation by the prosecuting attorney and findings by the court pursuant to Rule 19.04, subdivision 2(D).

Subd. 2. Extended Jurisdiction Juvenile Prosecution Discretionary. The court may designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a non-presumptive certification case:

(1) when the court finds, after a contested certification hearing, that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety pursuant to Rule 18.06, subdivision 3, and the court determines that extended jurisdiction juvenile prosecution is appropriate; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing; or

(B) following a motion for extended jurisdiction juvenile proceeding:

(1) when the court finds, after a contested extended jurisdiction juvenile hearing conducted pursuant to Rule 19.04, that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing.

112. Rule 19.06. Order.

Renumber Rule 19.06 as Rule 19.07 and amend as follows:

Rule 19.0619.07 Order

Subd. 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order. ~~Within fifteen (15) days of the hearing the court shall enter an order, with written findings of fact and conclusions of law. If the motion is granted further proceedings shall be held in juvenile court pursuant to the Minnesota Rules of Criminal Procedure, except as modified by these rules. If the motion is denied further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7.~~When a child waives the right to a

contested hearing and stipulates to entry of an order that the child is subject to an extended jurisdiction juvenile prosecution, the court shall, within five (5) days of that hearing, enter a written order stating:

(A) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(B) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense(s).

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the contested hearing, the court shall enter an order with written findings of fact and conclusions of law as provided in this subdivision.

(A) If the court orders that the proceeding be an extended jurisdiction juvenile prosecution, the order shall state:

(1) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05.

(B) If the court does not order that the proceeding be an extended jurisdiction juvenile prosecution, the court order shall state:

(1) that the case shall proceed as a delinquency proceeding in juvenile court;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

If the court orders that the matter proceed as an extended jurisdiction juvenile prosecution, further proceedings shall be held pursuant to the Minnesota Rules of Criminal Procedure, except as modified by these rules. If the court orders that the matter is not an extended jurisdiction juvenile prosecution, further proceedings shall be held pursuant to Rule 7.

Subd. 23. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under ~~Minnesota Rules of Juvenile Procedure~~ 5.

Subd. 34. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue ~~over~~of the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall be processed in the manner provided by Minnesota Statutes, section ~~260.121~~260B.105. The receiving court thereafter has venue for purposes of all proceedings under ~~Minn.R.Juv.P. 19.08~~Rules 19.10 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and ~~19.09~~19.11 (revocation of stay of adult criminal sentence).

Subd. 45. Final Order. ~~This order shall constitute~~ Any order issued pursuant to this rule is a final order.

113. Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

Add new Rule 19.08 as follows:

Rule 19.08 Withdrawal of Waiver of Extended Jurisdiction Juvenile Hearing

Subd. 1. General Procedure. A child may bring a motion to withdraw the waiver of extended jurisdiction juvenile hearing and stipulation to extended jurisdiction juvenile prosecution order:

(A) within fifteen (15) days of the filing of the order, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the extended jurisdiction juvenile prosecution order.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of the waiver:

(A) the waiver was not knowingly, voluntarily, or intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of extended jurisdiction juvenile hearing, the court shall vacate the order for extended jurisdiction juvenile prosecution, and proceedings will resume pursuant to Rule 19.04. If the court denies the motion to withdraw the waiver for extended jurisdiction juvenile hearing, the order for extended jurisdiction juvenile prosecution shall remain in effect, and proceedings will resume pursuant to Rule 19.09.

114. Rule 19.07. Extended Jurisdiction Juvenile Prosecution.

Renumber Rule 19.07 as Rule 19.09 and amend as follows:

Rule 19.0719.09 Extended Jurisdiction Juvenile Prosecution

Every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to Minnesota Rules of Criminal Procedure 26. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.02, except:

(A) The time shall run from the date of the filing of the extended jurisdiction juvenile order.

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty (30) days of the prosecution motion for EJJ designation, the trial shall be scheduled within sixty (60) days of the court's order designating the child an extended jurisdiction juvenile; ~~or if, unless good cause is shown why the trial should not be held within that time.~~ If the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty (30) days from the filing of the motion, the trial, ~~for a child in detention,~~ shall be commenced within thirty (30) days of entry of the court's order designating the child an extended jurisdiction juvenile.

115. Rule 19.08. Disposition.

Renumber Rule 19.08 as Rule 19.10 and amend as follows:

Rule ~~19.08~~19.10 Disposition

Subd. 1. Guilty Plea or Conviction. Guilty pleas shall be made on the record and pursuant to ~~Minnesota Rules of Criminal Procedure~~ 15. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes, section ~~260.185~~260B.198; and

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the conditions that the child not violate the provisions of the disposition ordered in ~~subd.~~subdivision 1(A) above or commit a new offense.

Subd. 2. Length of Stayed Sentence. Unless the stayed sentence is executed after a revocation hearing pursuant to ~~Minnesota Rules of Juvenile Procedure 19.09~~19.11, jurisdiction of the juvenile court shall terminate on the child's twenty-first (21st) birthday or at the end of the maximum probationary term, whichever occurs first. The court may terminate jurisdiction earlier pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08.

Subd. 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions. If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes, section ~~260.185~~260B.198. But if the child has plead guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under ~~Minnesota Rules of Juvenile Procedure 19.08, subd.~~19.10, subdivision 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes, section ~~260.121~~260B.105. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, prior to making the transfer, the transferring court shall prepare and file with the receiving court, a copy of the juvenile's file, including any plea and sentencing transcript.

Subd. 5. Record of Proceedings. Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile, any verbatim record made of the plea and sentencing proceedings shall be transcribed and filed with the court administrator within thirty (30) days after the date of sentencing. Where venue is transferred as provided in ~~Subd.~~subdivision 4, the transcript shall be immediately prepared and filed with the transferring court.

116. Rule 19.09. Revocation.

Renumber Rule 19.09 as Rule 19.11. Amend subdivision 1(A) as follows:

Rule ~~19.09~~19.11 Revocation

Subd. 1. Commencement of Proceedings.

(A) *Issuance of Revocation Warrant or Summons.* Proceedings for the revocation of a stayed sentence shall be commenced by the issuance of a warrant or a summons by the court. The warrant or summons shall be based upon a written report showing probable cause to believe that the probationer has violated any of the provisions of the disposition order or committed a new offense. The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. The court may issue a warrant for immediate custody of the ~~child~~probationer if the court finds that there is probable cause to believe that:

(A) the ~~child~~probationer has violated the terms of probation or a court order; and;

~~(B)~~(1) the ~~child~~probationer failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the ~~child~~probationer have failed, or there is a substantial likelihood that the ~~child~~probationer will fail to respond to a summons; or

~~(C)~~(2) the ~~child~~probationer or others are in danger of imminent harm; or

~~(D)~~(3) the ~~child~~probationer has left the custody of the detaining authority without permission of the court.

Amend subdivisions 2 and 3 as follows:

Subd. 2. First Appearance.

(A) *Advice to Probationer.* A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be

advised of the nature of the violation charged. The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

(1) the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel will be appointed;

(2) unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that the probationer violated any provisions of the disposition order or committed a new offense and that the stayed sentence should therefore be revoked;

(3) before the revocation hearing, all evidence to be used against the probationer shall be disclosed to the probationer and the probationer shall be provided access to all official records pertinent to the proceedings;

(4) at the hearing, both the prosecuting attorney and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) the probationer has the right of appeal from the determination of the court following the revocation hearing.

(B) *Appointment of Counsel.* If the probationer is financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel ~~will~~shall be appointed.

(C) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding whether and upon what conditions to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by ~~Minnesota Rules of Juvenile Procedure 5 and Minnesota Rules of Criminal Procedure 6.02, subd. subdivisions~~ 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of ~~Minnesota Rules of Juvenile Procedure 19.09, subd. 19.11, subdivisions~~ 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) *Finding of Violation of Terms and Conditions of Disposition.*

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, ~~subd.~~subdivision 3.

(2) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, and the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, the court shall order the execution of the sentence or make written findings indicating the mitigating factors that justify continuing the stay.

(D) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(E) *Appeal.* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal from a sentence by the Minnesota Rules of Criminal Procedure 28.05.

(F) Any verbatim record of Extended Jurisdiction Juvenile probation revocation hearings shall be transcribed and filed with the court administrator within thirty (30) days of the date of sentencing.

117. Comments to Rule 19.

Amend the comments to Rule 19 as follows:

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn. R. Juv. P. 19.04, subd. 1(B) and 19.06, subd. 23 is modeled after Minn. R. Crim. P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

Most of the waiver language in Minn. R. Juv. P. 19.04 subd. 1(C) is taken from the 1983 version of Minn. R. Juv. P. 15.03.

Minn. R. Juv. P. 19.04 does not address the consequences of the child's testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968); ~~or by way of impeachment 2nd State v. Christenson~~, 371 N.W.2d 228 (Minn. Ct. App. 1985); (impeachment); cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn._R._Juv._P. 19.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Previously, the last sentence to Rule 19.04, subd. 2(A) stated, "If witnesses are to be called, the court may continue the hearing." This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

*Much of the content of Minn._R._Juv._P. 19.04, subd. 3 is modeled after Minn._R._Crim._P 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn._R._Crim._P. 11.03. Also note, *In re Welfare of E.Y.W.*, 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).*

Minn._R._Juv._P. 19.04, subd. 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minnesota Statutes, section 260.015, subd. 5 (1994)260B.007, subd. 6 (2002).

When a juvenile waives probable cause solely for the purpose of an extended jurisdiction juvenile proceeding, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Minn._R._Crim._Juv. P. 19.04, subd. 4(B)3(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by the Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a "good cause" standard for use in determining whether to grant a continuance. "Good cause" is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minnesota Statutes, section 260.155, subd. 4b (1994)260B.163, subd. 7 (2002) the custodial parent or guardian of the child alleged or found to be delinquent or prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended juvenile jurisdiction proceedings, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes, section 260.145 (1994)260B.154 (2002).

Pursuant to Minnesota Statutes, section 260.215 (1994)260B.245 (2002), if a child is convicted as an extended jurisdiction juvenile, the child will be assigned points for the purpose of computing a criminal history score pursuant to the Minnesota Sentencing Guidelines, as if the child were an adult.

A disposition form developed by the Minnesota Sentencing Guidelines Commission shall be completed by the court in addition to the findings of facts, conclusions of law and order.

A sentencing worksheet developed by the Minnesota Sentencing Guidelines Commission shall be completed by the probation department pursuant to Minn. R. Crim. P. 27, and Minnesota Statutes, sections 609.115 and 631.20 (1994-2002). The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn. R. Crim. P. 27.03, subd. 4(eC).

118. Rule 20.01. Proceeding When Child is Believe to be Incompetent.

Amend Rule 20.01 as follows:

Rule 20.01 Proceeding when Child is Believed to be Incompetent

Subd. 1. ~~Competency~~Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

~~(A) A child shall not be permitted to waive counsel if the child lacks sufficient ability to:~~

~~(1) knowingly, voluntarily, and intelligently waive the constitutional right to counsel;~~

~~(2) appreciate the consequences of the decision to proceed without representation by counsel;~~

~~(3) comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case.~~

~~——(B) A child shall not be permitted to enter a plea or be tried or sentenced for any offense if the child lacks sufficient ability to:~~

~~(1)(A) consult with a reasonable degree of rational understanding with defense the child's counsel; or~~

~~(2)(B) understand the proceedings or participate in the defense due to mental illness or mental deficiency.~~

Subd. 2. Counsel. ~~The court may not proceed under this rule before the child consults with counsel and the child's counsel has an opportunity to be heard by the court. Any child subject to competency proceedings shall be represented by counsel.~~

Subd. 23. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) Felony or Gross Misdemeanor. If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient

showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a ~~gross misdemeanor~~, misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) ~~Medical Examination.~~ If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, Chapter 253B to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within ~~at least sixty~~ (60) days, the examiner shall send a written report to the judge who ordered such examination, the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child;

(2) If the child is mentally ill or mentally deficient, an opinion as to:

(a) whether the child can understand the proceedings and participate in the defense;

(b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

(c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

(d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 34. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the ~~defense~~child's counsel moved for the examination, the ~~defense~~child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of ~~defense~~the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require ~~defense~~the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter an order finding competency. Otherwise, the court shall enter an order finding incompetency.

Subd. 45. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a ~~gross misdemeanor,~~ misdemeanor, petty matter, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by ~~Minnesota Rules of Juvenile Procedure 20.01, subd. 6~~ subdivision 7.

(1) If the court determines that the child is mentally ill or deficient so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection ~~and~~ or services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under

CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 56. Continuing Supervision by the Court in Felony Cases. ~~The. In felony and gross misdemeanor cases in which proceedings have been suspended, the~~ person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the petition against the child has been dismissed as provided by ~~Minnesota Rules of Juvenile Procedure 20.01, subd. 6~~ subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 67. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19th) birthday in the case of a delinquency, or twenty-first (21st) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to ~~Minnesota Rules of Juvenile Procedure 20.01, subd. 6(A)~~ subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 78. Determination of Legal Issues Not Requiring Child's Participation.

The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 89. Admissibility of Child's Statements.

When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

119. Rule 20.02. Defense of Mental Illness or Mental Deficiency at the time of the Offense.

Amend Rule 20.02, subds. 1, 2, 3, 5, and 7 as follows:

Subd. 1. When Raised.

(A) If the child intends to raise mental illness or mental deficiency as a defense, the child's counsel shall advise the court and prosecuting attorney in writing at the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or mental deficiency expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or mental deficiency is raised, the court shall order an examination as described in ~~Minnesota Rules of Juvenile Procedure 20.01, subd 2(C)~~ subdivision 3(C). The court may order that the examination for competency under ~~Minnesota Rules of Juvenile Procedure 20.01 and the Minnesota Rules of Juvenile Procedure 20.02~~ examination be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or mental deficiency; ~~may;~~

(B) strike any such evidence previously introduced; ~~may;~~

(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; ~~and~~

(D) ~~may~~ make any such other ruling as it deems just.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, the prosecuting attorney and to the child's counsel. The contents of the report shall not otherwise be disclosed except as ordered by the court. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or mental deficiency as requested by the court;

(B) If so directed by the court, an opinion as to whether, because of mental illness or deficiency, the child at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;

(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or deficiency.

Subd. 7. Trial. When a child is examined under ~~Minnesota Rules of Juvenile Procedure 20.01 or Minnesota Rules of Juvenile Procedure 20.02, or both~~, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Mental Deficiency.* If a child notifies the court and prosecuting attorney under ~~Minnesota Rules of Juvenile Procedure 20.02, subd. subdivision~~ 1 of an intention to rely solely on the defense of mental illness or deficiency, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under ~~Minnesota Rules of Juvenile Procedure 20.02, subd. subdivision~~ 1 of an intention to rely on the defense of mental illness or deficiency together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or deficiency.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the defense of mental illness or mental deficiency.

(D) *Procedure Upon Separated Trial of Defenses.*

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to ~~Minnesota Rules of Juvenile Procedure 13.09~~. If the court determines that the elements of the offense have been proved beyond a reasonable doubt and the child is relying on the sole defense of mental illness or mental deficiency, the defense of mental illness or mental deficiency shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

- (a) not guilty by reason of mental illness; or
- (b) not guilty by reason of mental deficiency; or
- (c) guilty.

The court shall enter findings pursuant to ~~Minnesota Rules of Juvenile Procedure 13.09~~.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to ~~Minnesota Rules of Juvenile Procedure 20.02, subd. subdivision~~ 7(D)(1). A jury trial in an ~~Extended Jurisdiction Juvenile~~ extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, ~~subd. subdivision~~ 6(4).

120. Comments to Rule 20.

Amend the comments to Rule 20 as follows:

Minn. R. Juv. P. 20 is based upon Minn. R. Crim. P. 20.

Under Minn. R. Juv. P. 20.01, subd. ~~2(C)~~3(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child's counsel or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minnesota Statutes, section ~~260.251, subd. 1(3) (1994)~~260B.331, subd. 1(2002). Furthermore, under Minnesota Statutes, section 260.042 (2002), the court shall make an orientation and educational program available for juveniles and their families in accordance with the program established, if any, by the Minnesota Supreme Court.

"A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult." In re Welfare of D.D.N., 582 N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979). C.f. Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 278 Minn. 212, 215, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minnesota Statutes, section 260B.225 (2002) (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been recognized for juveniles in In re Gault, 387 U.S. 1, 41 (1967), the corollary right to self-representation has not been established in the juvenile context. The committee recognized that children subject to competency proceedings may be vulnerable; therefore, it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

121. Rule 21.01. Generally.

Amend the first sentence of the first paragraph to Rule 21.01 as follows:

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, and certification proceedings in district court.

122. Rule 21.03. Appeal by Child.

Amend Rule 21.03 as follows:

Subd. 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivisions~~ 1(A) and (B). In addition, a child shall be permitted to seek a discretionary appeal as provided for in Minnesota Rules of Criminal Procedure 28.02, ~~subd. subdivision~~ 3. A motion for a new trial is not necessary in order to appeal.

The court shall notify a child of the right to appeal in any case where it issues a final order. A child may combine an appeal from a sentence or a disposition with an appeal from a judgment of conviction or an order for adjudication. The court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. The court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in ~~Minnesota Rules of Juvenile Procedure 15.05, subds. subdivisions~~ 2 and 3.

(A) *Final Orders.* Final orders include orders for:

(1) certification to adult court, whether the order is entered or stayed pursuant to ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivision~~ 3;

(2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198, subdivisions~~ 1(a) or (b);

(3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198, subdivision~~ 1;

(4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;

(5) denial of motion for new trial or rehearing;

(6) determination as an extended jurisdiction juvenile prosecution;

(7) conviction and sentencing of an extended jurisdiction juvenile;

(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

(9) an order modifying a disposition; and

(10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication and an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders.* A child may appeal from the following non-final orders:

(1) an order refusing or imposing conditions of release; and

(2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult.

Subd. 2. Procedure for Appeals.

(A) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days ~~after~~of the filing of the appealable order ~~appealed from~~.

(B) *Notice of Appeal and Filing.* The appellant shall file the following documents with the clerk of the appellate courts:

(1) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;

(2) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;

(3) a certified copy of the judgment or order appealed from; and

(4) two copies of the statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03.

When the disposition is ordered in a county other than the one in which the child pled guilty or was found to have committed the offense(s), the appellant shall serve notice of appeal on the prosecuting attorney, district court administrator and court reporter in the county where the child pled guilty or was found to have committed the offense(s) as well as the prosecuting attorney, district court administrator and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minnesota Rules of Civil Appellate Procedure 103.01 ~~subd.~~, subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

(C) *Transcript of Proceedings and Transmission of the Transcript and Record.* The Minnesota Rules of Civil Appellate Procedure shall govern the transcription of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here:

(1) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

(2) For parties represented by the state public defender, payment for transcripts will be made after receipt of the transcripts.

(3) Any videotape or audiotape exhibits admitted at trial or hearing shall be transcribed at the request of either party and shall be included as part of the record.

(D) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) The appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after the filing of the notice of appeal.

(2) The appellant's brief shall contain a statement of the procedural history.

(3) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

(4) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

Subd. 3. Stay Pending Appeal.

(A) *Generally.* Pending an appeal, a stay may be granted by the trial court or the court of appeals. A motion for stay initially shall be presented to the trial court.

In cases certified to adult court, the district court shall stay further adult criminal proceedings, and may stay certification orders pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted, conditions of release must be set pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 21.03, subd. subdivision 4(B).

(B) *Placement Pending Appeal.*

(1) *Upon Certification.* If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure 6.02, and detention in an adult facility shall be presumed.

(2) *Other Cases.* If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statutes, section ~~260.171~~ 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification of the conditions of release pending review, may be made to the court of appeals. The motion shall be determined upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals may order the release of a child with or without conditions, pending disposition of the motion. The motion shall be determined on an expedited basis.

(B) *Conditions of Release.* Minnesota Rules of Criminal Procedure 6.02 shall govern conditions of release upon certification. If a stay is granted under ~~Minnesota Rules of Juvenile Procedure~~ 21.03, subd. subdivision 3 of this rule, Minnesota Statutes, section ~~260.171~~ 260B.176 shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The court shall make written findings on each of the above factors. The court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the court in determining the disposition imposed in juvenile proceedings. ~~In certification and extended jurisdiction juvenile cases where a child is~~

~~detained in secure custody, the court shall give credit for time served when it executes an adult sentence.~~

123. Rule 21.04. Appeal by Prosecuting Attorney.

Amend Rule 21.04, subdivisions 1, 3, and 5 as follows:

Subd. 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

~~(1)(A)~~ sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;

~~(2)(B)~~ denial of a motion for certification or denial of a determination of extended jurisdiction juvenile; ~~and~~

~~(3)(C)~~ pretrial orders, including suppression orders; or

(D) orders dismissing the petition for lack of probable cause when the dismissal was based solely on a question of law.

~~Orders dismissing a petition for lack of probable cause or dismissing a complaint pursuant to Minnesota Statutes, section 631.21, are not appealable.~~

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in ~~Minnesota Rules of Juvenile Procedure~~ 15.05, subs. subdivisions 2 and 3.

Subd. 3. Procedure for Appeals. Prosecutorial appeals from final orders shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 21.03, subd. subdivision 2. All other prosecutorial appeals shall proceed as follows:

(A) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the certification hearing or the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the appealable order ~~appealed from~~ is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(B) *Notice of Appeal and Filing.* ~~Minnesota Rules of Juvenile Procedure~~ 21.03, subd. subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney except that the prosecuting attorney must file a statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03. In addition, if a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

(C) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

(2) The appellant's brief shall contain a statement of the procedural history.

(3) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by ~~Minnesota Rules of Juvenile Procedure 5~~ or Minnesota Rules of Criminal Procedure 6.02, ~~subs. subdivisions 1, and 2,~~ for children certified to adult court. The court shall consider whether the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

124. Rule 21.05. Appeal by Parent(s), Legal Guardian or Legal Custodian of the Child.

Amend Rule 21.05 as follows:

~~If the~~ A parent(s), legal guardian, or legal custodian who participated separately pursuant to Minnesota Rules of Juvenile Procedure 2.04, subd. subdivision 3, ~~they~~ may appeal from a disposition, ~~sentence or order for certification by the juvenile court.~~

Parents ~~A parent, legal guardian, or legal custodian who are~~ is indigent may ~~make application~~ apply to the office of the state public defender for legal representation.

Parents' right to appeal is limited to cases where they have a liberty or property interest involved and their interest is adverse to that of the child.

The procedure for appeals by ~~the~~ a parent(s), legal guardian, or legal custodian shall be governed by ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivision 2.~~

125. Comments to Rule 21.

Amend the comments to Rule 21 as follows:

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or by petitioning for accelerated review pursuant to Minn. R. Civ. App. P. 118.

The scope of review shall be pursuant to Minn. R. Civ. App. P. 103.04.

Minn. R. Juv. P. 21.03, subd. 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn. R. Crim. P. 27.04, subd. 3(5) and 28.05, subd. (2). An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes, section ~~260.185, subd. 260B.198, subs. 1(a) or (b)~~ (1994)2002 is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes, section ~~260.185, subd. 1~~ (1994)260B.198, subd. 1 (2002).

A child's representation by the public defender is governed by ~~Minn. Stat. Ch. Minnesota Statutes, chapter 611.~~ The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

The parents or the child may be required to contribute to some or all of the costs of representation. See Minn. R. Juv. P. 3.06, subd. 2. See also Minnesota Statutes, section 260.251, subd. 4 (1994) 260B.331, subd. 5 (2002).

Minn. R. Juv. P. 21.03, subd. 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn. R. Civ. App. P. 110.02 shall govern partial transcripts.

~~*In the new legislation providing representation for juveniles on appeal and expedited appeals, funding for this mandate was not provided. Until further resources are available, it is recommended that the court of appeals be lenient in granting extensions for timing of briefs if requested. When added staff can be hired, the rules should be modified to shorten time frames to allow for more expedited appeals of juvenile cases.*~~

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn. R. Juv. P. 18.0618.07. If a stay is granted, the child will be detained in a juvenile facility if detention is necessary. If the stay of the certification order is not granted and detention is necessary, the child will more likely be detained in an adult facility pending the appeal.

Minn. R. Juv. P. 21.04, subd. 1(D), which allows prosecutors to appeal orders dismissing a petition for lack of probable cause when dismissed solely on a question of law, is based on In re Welfare of C.P.W., 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

126. Rule 22.03. Notice to Remove.

Amend the first sentence of Rule 22.03, subd. 1 as follows:

The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing.

127. Comments to Rule 22.

Amend the first paragraph of the comments to Rule 22 as follows:

This rule is modeled after Minn. R. Crim. P. 26.03, subd. 13. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

Amend the last citation sentence of the third paragraph of the comments to Rule 22 as follows:

E.g., In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

128. Rule 23.03. Notice to Remove a Particular Referee.

Amend Rule 23.03 as follows:

The child's counsel or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under ~~Minnesota Rules of Juvenile Procedure 22~~. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

129. Rule 23.05. Review.

Amend Rule 23.05, subs. 2 and 3 as follows:

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to ~~Minnesota Rules of Juvenile Procedure 28~~.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee ~~except those dismissing a petition for lack of probable cause~~. The prosecuting attorney is not entitled to a review on any pretrial findings by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

130. Rule 23.06. Order of the Court.

Amend Rule 23.06 as follows:

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to ~~Minnesota Rules of Juvenile Procedure 23.05~~.

131. Rule 24.01. Appointment.

Amend Rule 24.01 as follows:

(A) The court shall appoint a guardian ad litem, except as provided in ~~Minnesota Rules of Juvenile Procedure 24.01 (B)~~ to act in place of a parent, legal guardian or legal custodian to protect the best interests of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile

to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

(1) counsel has been appointed or is otherwise retained for the child, and

(2) the court finds that the best interests of the child are otherwise protected.

~~A determination not to appoint a guardian ad litem must be based on a finding made on the record or in writing which states the reasons for the decision.~~

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

132. Rule 25.01. Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Fax and Notice by Telephone.

Amend the title of Rule 25.01 as follows:

Rule 25.01. Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by ~~Fax~~Facsimile Transmission and Notice by Telephone

Amend Rule 25.01, subs. 2 and 4 as follows:

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears pursuant to the mailed notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted unless grounds exist under Rule 4.03.

Subd. 4. Detention Hearings: Service by ~~FAX~~Facsimile Transmission or Notice by Telephone Permitted.

(A) *Service By ~~FAX~~Facsimile Transmission.*

(1) Notice to Defense Counsel; Defense Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, and notice of the detention hearing, ~~and~~ The court administrator shall also provide to the Office of the Public Defender or the child's attorney copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Defense counsel shall have immediate and continuing access to the child. The notice in lieu of summons and copies of the reports may be provided by ~~FAX~~facsimile transmission or hand delivery if mailed notice would not be effective given the time remaining before the detention hearing.

(2) Notice to Prosecuting Attorney. If mailed notice in lieu of summons would not be effective given the time remaining before the detention hearing, notice in lieu of summons may be provided by ~~FAX~~facsimile transmission or hand delivery.

(B) *Notice By Telephone.* If the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s) or spouse of the child ~~have~~has not ~~gotten~~received notice of the time and place of the detention hearing and effective service by mail or ~~FAX~~facsimile transmission or hand delivery of the notice in lieu of summons is not possible, the court administrator may provide notice of the time and place of the detention hearing by telephone call.

133. Rule 25.03. Procedure for Notification.

Amend Rule 25.03, subds. 4 and 5 as follows:

Subd. 4. Timing. ~~A notice in lieu of summons shall be mailed at least five (5) days before the hearing.~~ A summons shall be personally served at least five (5) days before the hearing. A notice in lieu of summons shall be mailed at least eight (8) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:

- (1) that the summons was served, ~~and~~;
- (2) the person on whom the summons was served; ~~and~~;
- (3) the date, time, and place of service.

(B) *Service by Mail.* On or before the date set for appearance, the person who served notice in lieu of summons by mail shall file a written statement with the court showing:

- (1) the name of the person to whom the summons or notice was mailed;
- (2) the date the summons or notice was mailed; and
- (3) whether the summons or notice was sent by certified mail.

(C) *Notice of Detention Hearing: Service by ~~FAX~~Facsimile Transmission.* The person providing notice of a detention hearing by ~~FAX~~facsimile transmission shall file a written statement with the court showing:

- (1) the name, address and ~~FAX~~facsimile number of the person to whom the notice was ~~faxed~~sent by facsimile transmission;
- (2) the time and date the ~~FAX~~facsimile transmission was sent or the efforts to do so; and
- (3) the reason why notice was not sent by First Class Mail.

(D) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a written statement with the court showing:

- (1) the name, address and telephone number of the person who was contacted with notice of the detention hearing;
- (2) the date and time of the telephone call or the efforts to do so; and
- (3) the reason why notice in lieu of summons was not sent by First Class Mail and, in the case of the child's attorney or the prosecuting attorney, why the notice in lieu of summons was not ~~faxed~~sent by facsimile transmission.

134. Comments to Rule 25.

Amend the comments to Rule 25 as follows:

Pursuant to Minnesota Statutes, section 260.141, subd. 2 1 (1994), notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn. R. Civ. P. 4.02, by mail with an acknowledgement returned to the court. That was not the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and petition by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgement or by personal service. The legislature has since amended Minnesota Statutes, section 260.141, subd. 2 1 to comport with this rule. 1996 Minn. Laws Ch. 408, Art. 6, Secs. 3 and 12; see Minn. Stat. § 260B.152, subd. 1 (2002).

This rule allows for notice of a detention hearing to be provided by ~~FAX~~facsimile transmission or telephone call when, given the time remaining before the detention hearing, mailed notice in lieu of summons would not be effective. Notice by ~~FAX~~facsimile transmission or telephone is not permitted for any other type of hearing.

~~This rule is not meant to prohibit~~Historically, there have been some informal service methods for service of the prosecuting attorney and the public defender by each other and by the court, which have been historically efficient and cost effective were instituted for efficiency and cost-effectiveness. An example of this would be where the court administrator serves notice in lieu of summons on the prosecuting attorney by walking upstairs to the County Attorney's Office and placing the notice in lieu of summons in a pre-designated in-box. However, where the rules require a specific method of service, these informal methods of service may not be used. See City of Albert Lea v. Harrer, 381 N.W.2d 499 (Minn. Ct. App. 1986) (stating "[t]he clerk and the city attorney cannot agree to ignore the rules").

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

135. Rule 28. Copies of Orders.

Amend the first sentence of Rule 28 as follows:

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to the child, the child's counsel, prosecuting attorney, probation officer, the parent(s), the legal guardian or legal custodian of the child and their counsel.

136. Rule 29.02. Availability of Transcripts.

Amend Rule 29.02, subd. 2 as follows:

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian. Transcripts of hearings for use at dispositional hearings, for appeal from disposition

hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to ~~Minnesota Rules of Juvenile Procedure 2.03, subd. 2.04, subdivision 3.~~ Applications for transcripts shall be made to the court in writing or on the record.

137. Comments to Rule 30.

Amend the comments to Rule 30 as follows:

Legal records as defined in Minnesota Statutes, section ~~260.161~~260B.171, subd. 1 (19942002) are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minnesota Statutes, section ~~260.161, subd. 2 (1994)~~260B.171, subd. 4 (2002), provides exceptions to public access of "legal records," arising under Minnesota Statutes, section ~~260.155~~260B.163, subd. 1 (19942002), delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minnesota Statutes, section 245A.04, subd. 3(d) (Supp. 19952002), which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minnesota Statutes, sections 611A.03, 611A.04, 611A.06 and 629.73 (19942002), which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minnesota Statutes, section 609.02 (19942002), if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

Pursuant to Minnesota Statutes, section ~~260.161, subd. 1a (1994)~~260B.171, subd. 2 (2002), the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for ~~felony level criminal sexual conduct~~felony- or gross misdemeanor-level offenses. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minnesota Statutes, section ~~260.161, subd. 1b (1994)~~260B.171, subd. 3(a) (2002). When the probation officer transmits a disposition order ~~is transmitted~~ to a school, the probation officer shall notify the parent, legal guardian or legal custodian ~~shall be notified that this information has been sent to the juvenile's school.~~

"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.

138. Rule 31.01. Computation.

Amend the fourth sentence of Rule 31.01 as follows:

As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (~~President's~~Presidents' Day), Memorial Day, Independence Day, Labor Day, Columbus Day, ~~Veteran's~~Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State.

139. Forms.

Amend the current juvenile forms by adding identification numbers, adding an introductory statement, and amending or adding the forms as follows.¹

¹ The forms in this order do not contain the conventions used to indicate the additions and deletions to the Rules because it was not possible to make those indications in the form format.

JUVENILE DELINQUENCY FORMS

Form

1. Petition
2. Notice of the Rights of Victims in Juvenile Court
3. Notice in Lieu of Summons
4. Summons
5. Prosecutor's Request for Disclosure
6. Prosecutor's Notice of Evidence and Identification Procedures
7. Petition to Proceed Pro Se in Juvenile Delinquency Proceeding
8. Statement of Rights: Juvenile Delinquency Proceedings
9. Statement of Rights: Juvenile Petty Offender Proceedings
10. Statement of Rights: Juvenile Traffic Offender Proceedings
11. Statement of Rights: Juvenile Probation Revocation
12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case
13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case
14. Waiver of Right to Contested Hearing in a Presumptive Certification Case
15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case
16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter

Introductory Statement

The following forms are provided as an aid to practitioners and the court in the juvenile justice system. The forms are not mandatory, but shall be accepted by the court if offered by any party or counsel for their designated purpose. The Advisory Committee on Juvenile Delinquency Rules strongly recommends that Forms 12 through 16 be used in all felony level or enhanceable cases. Additionally, the Committee encourages use of the Petition in every case, but recognizes that the form is likely to undergo further change with the implementation of the Minnesota Case Information System (MNCIS).

Form 1. Petition

State of Minnesota District Court County of _____ Juvenile Court

COUNT	LIST OFFENSE	MOC	F/GM/MP*

* Indicates Felony/Gross Misdemeanor/ Misdemeanor/ Petty

MASTER FILE No. _____	CA FILE No. _____
CONTROL No. _____	DATE INITIAL APPEARANCE _____
CONTROLLING AGENCY _____	PROBATION <input type="checkbox"/> ACTIVE <input type="checkbox"/> NON-ACTIVE
PETITION No. _____	

FINGERPRINTING COMPLETED YES NO
 PHOTOGRAPHING COMPLETED YES NO

AMENDED
 COUNTY ATTORNEY DESIGNATED EJJ
 MOTION FOR EJJ FILED
 MOTION FOR CERTIFICATION FILED

<input type="checkbox"/> FELONY	<input type="checkbox"/> DELINQUENCY
<input type="checkbox"/> GROSS MISDM	<input type="checkbox"/> TRAFFIC
<input type="checkbox"/> MISDEMEANOR	
<input type="checkbox"/> PETTY OFFENSE	

PETITION

In the Matter of the Welfare of:

NAME: first, middle, last and child's address if different from parent _____	RACE _____	DATE OF BIRTH _____
---	---------------	------------------------

The child's parents, guardian, spouse or nearest relative, noting their relationship and address are as follows:

NAME: first, middle, last

_____	_____
-------	-------

Petitioner states to the Court that there is probable cause to believe that the child has committed the following described offense(s), based upon the following probable cause statement or the attached reported and exhibits:

State of Minnesota District Court County of _____ Juvenile Court

COUNT	LIST OFFENSE	MOC	F/GM/M/P

I endorse this Petition as to form and verify that the contents are true to the best of my information and belief and that reasonable grounds exist to support the Petition.

 Assistant _____ County Attorney Date

Subscribed and sworn to before me on _____

 Notary Public

Form 2. Notice of the Rights of Victims in Juvenile Court

NOTICE OF THE RIGHTS OF VICTIMS IN JUVENILE COURT

1. Right to Participation

Minnesota law (Minn. Stat. § 260B.163, subd.1 (2002) and § 611A.01, et seq. (2002)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

- a. The right to have input in a pretrial diversion program decision;
- b. The right to object to the proposed disposition and a plea agreement;
- c. The right to request the prosecutor make a demand for a speedy trial;
- d. The right to be present in court at the time of the disposition hearing (sentencing); and
- e. The right to submit an impact statement to the judge orally or in writing, at the time of disposition (sentencing) hearing.

2. Right to Notification

You have a right to be notified of certain information such as the following:

- a. The contents of any plea agreement;
- b. The schedule changes in court proceedings if you have been subpoenaed or requested to testify;
- c. The information regarding the detention hearing of an arrested or detained juvenile;
- d. The final disposition of the case;
- e. The transfer of the juvenile to a less secure correctional facility;
- f. The release of the juvenile from a custodial institution; and
- g. The escape and apprehension of the juvenile from a custodial institution.

3. Right to Protection

As a victim and/or witness, you have certain rights to protection such as the following:

- a. The right to a safe and secure waiting area during the court process, if available;
- b. The right to ask a law enforcement agency to withhold public access to data revealing your identity;
- c. The right not to give your home or business address in open court; and
- d. The right not to be retaliated against by employers if you are called to testify as a victim or witness.

4. Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may ask the court to order the juvenile to pay restitution under Minn. Stat. §611A.04. If the juvenile fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

5. Additional Rights

In cases involving sex offenses, you have the right to be notified whether the offender has any sexually transmitted diseases, and may also have the right to ask that the offender submit to HIV-testing.

TERMS USED IN JUVENILE COURT PROCEEDINGS

DETENTION

A juvenile can be detained in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, at an adult jail, or in the juvenile's home subject to electronic home monitoring. Most juveniles must appear before the court within 36 hours of being taken into custody for a detention hearing.

ARRAIGNMENT

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

PRETRIAL HEARING

In some cases, the judge orders a pretrial hearing to decide issues of law and allow the parties the opportunity to settle the case before trial.

TRIAL

A juvenile has the same legal protections during trial as an adult charged with a crime. Most juvenile trials are held before a judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

DISPOSITION

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and/or victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

Form 3. Notice in Lieu of Summons

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

NOTICE IN LIEU OF SUMMONS

Child _____

Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

- juvenile traffic offender
- juvenile petty offender
- juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

YOU ARE entitled to have a summons requiring your appearance served upon you. The Court has directed that this notice be mailed to you instead of issuing a summons. However, if you do not appear at the hearing, a summons will be issued.

Attached is a copy of the:

- charging document
- court order
- motion
- affidavit
- other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

DATE: _____	BY THE COURT: _____
BY: _____ Deputy	_____ Court Administrator

Served by Regular Mail:	
DATE: _____	BY: _____

Form 4. Summons
STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of:

SUMMONS

_____ Child

Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

- juvenile traffic offender
- juvenile petty offender
- juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

Attached is a copy of the:

- charging document
- court order
- motion
- affidavit
- other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

TAKE NOTICE THAT if you fail to appear in response to this Summons, the Court may: (1) issue a warrant for your arrest; and (2) conduct a hearing without your presence and grant appropriate relief. Further information concerning the date and consequences of later hearings, if any, may be obtained from the Court by a request in writing.

DATE: _____	BY THE COURT: _____
BY: _____ Deputy	_____ Court Administrator

Served by Certified Mail Served Personally

DATE: _____ BY: _____

Form 5. Prosecutor's Request for Disclosure

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PROSECUTOR'S REQUEST
FOR DISCLOSURE**

_____ Child

Court File No. _____

Pursuant to Rule 10.05 of the Minnesota Rules of Juvenile Procedure, the County Attorney requests the child to make disclosure of the following items, which the child intends to introduce into evidence at the trial, certification, or extended jurisdiction juvenile hearing:

- (1) documents and tangible objects;
- (2) reports of examinations and tests;
- (3) notice of defenses;
- (4) names, addresses, and record of criminal convictions or delinquency adjudications of child's witnesses;
- (5) statements of child's witnesses;
- (6) details of and witnesses to the defense of alibi; and
- (7) record of child's prior proven or admitted delinquency offenses.

This request for disclosure incorporates by reference the language of Rule 10.05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule.

Date: _____

County Attorney

Form 6. Prosecutor Notice of Evidence and Identification Procedures

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of:

**PROSECUTOR NOTICE OF EVIDENCE
AND IDENTIFICATION PROCEDURES**

Child

Court File No. _____

TO: THE ABOVE-NAMED CHILD AND COUNSEL FOR CHILD:

Pursuant to Rule 10.02 of the Minnesota Rules of Juvenile Procedure, you are advised that in the above-captioned case, the Prosecutor has:

- Evidence obtained as a result of a search, search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping;
- Confessions, admissions or statements in the nature of confessions made by the child;
- Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child;
- Identification procedures used during the investigation were:
 - Line-ups
 - Observations of the respondent
 - Exhibition of photographs
 - Other _____
 - None of above is known to the prosecution at this time; you will be notified if any is discovered.

Date: _____

County Attorney

Form 7. Petition to Proceed as Pro Se in Juvenile Delinquency Proceeding

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO PROCEED PRO SE
IN JUVENILE DELINQUENCY PROCEEDING**

Child

Court File No. _____

My full name is _____, and I am the child in the above-entitled action.

I request the Court allow me to represent myself and state as follows:

1. I am _____ years old. My date of birth is _____. The last grade I attended in school is _____.
2. I have received and read the charging document in this matter.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of :

committed on or about _____ in _____ County, Minnesota.

5. I have discussed my desire to represent myself with an attorney whose name is _____.
6. I (have) (have not) been a patient in a mental hospital.
7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
8. I (have) (have not) been ill recently.
9. I (have) (have not) recently taken pills or medicine.
10. I understand that I have the right to have an attorney represent me in these proceedings. I understand that if the Court grants my petition to represent myself, I will be responsible for preparing my case for trial and trying my case. I understand that I will be bound by the same rules as an attorney. I understand that if I fail to do something in a timely manner or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.
11. In making my decisions regarding the conduct of this case, I have the right to consult with standby counsel if one is assigned to this case.
12. I understand the Court will schedule a probable cause hearing if one has not already been held. At the probable cause hearing, I can request that the petition or indictment filed against me be dismissed for lack of probable cause. The preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.
13. I understand that I am entitled to a court trial. I further understand that I will conduct all phases of the trial, including but not limited to writing and filing motions, making arguments to the Court, cross-examination of the witnesses for the prosecution, direct examination of my witnesses, making objections, opening statement and closing argument.
14. I understand I am entitled to require any witnesses I think are favorable to me to appear and testify at my trial by use of a subpoena.

15. I understand that a person who has a prior delinquency record can be given a longer out-of-home placement. The maximum statutory penalty the Court could impose if I am adjudicated delinquent is commitment to the Commissioner of Corrections until my 19th birthday. The maximum statutory penalty the court could impose if I am certified to adult court or prosecuted as an extended jurisdiction juvenile is commitment to the Commissioner of Corrections for a term as determined by the Minnesota Sentencing Guidelines.
16. I understand the Court may appoint a public defender to act as standby counsel in this case. However, I am under no obligation to seek advice from standby counsel. I understand that the role of standby counsel is as follows:
 - a. Standby counsel will be physically present in the courtroom during all proceedings in my case.
 - b. Standby counsel will respond to requests for advice from me. Standby counsel will not initiate such discussion.
 - c. Support staff of the public defender, such as investigators, secretaries, law clerks, and legal service advisors will not be available to me.
 - d. If I need investigative services, expert services, waivers of fees, research, secretarial services, or any other assistance, I must ask the Court for the relief or assistance I need. Such request is made pursuant to Minnesota Statutes, section 611.21.
 - e. If I desire to conduct legal research, I will be expected to do it myself.
 - f. Standby counsel will not be prepared to try my case on the trial date unless ordered to prepare to do so by the Court.
 - g. Standby counsel will be present for all court appearances to consult with me if I request. Standby counsel will be seated either at the back of the courtroom or at counsel table, based on my wishes and the Court's order. In an effort to support my constitutional right to self-representation, standby counsel will not initiate motions, objections, arguments to the Court, or any other aspect of representation unless I have given approval to that specific aspect of representation.
 - h. If I wish to give up my right to represent myself, I know the Court will not automatically grant my request. The Court will consider the following in granting or denying that request: the stage of the proceedings, whether standby counsel is prepared to take over, the length of the continuance necessary for standby counsel to assume representation, the prejudice to either party, and any other relevant considerations.
 - i. If the Court grants my request to represent myself and orders standby counsel, the trial date may be continued if requested by the standby counsel.
 - j. If the Court orders standby counsel to represent me after the trial has started and jeopardy has attached, the Court may grant a mistrial if requested by my new attorney and reset the trial date. It is solely up to the Court whether to grant a mistrial.
17. I have read the above two pages, discussed them with counsel, and I understand the rights and responsibilities I have in representing myself. In consideration of those rights and responsibilities, I want to give up my right to be represented by an attorney and will represent myself.

Date: _____

_____ Child

Form 8. Statement of Rights: Juvenile Delinquency Proceedings

STATEMENT OF RIGHTS JUVENILE DELINQUENCY PROCEEDINGS

You have been charged with a delinquent act by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney. If you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s), legal guardian(s), or legal custodian(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your guilty plea unless you admit doing something that is against the law.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty, the judge may:
 - a. Counsel you and your parent(s), legal guardian(s) or legal custodian(s).
 - b. Place you on probation in your own home under conditions established by the court;
 - c. Transfer your legal custody under court supervision and place you out of your home;
 - d. Transfer your legal custody by commitment to the Commissioner of Corrections;
 - e. Order restitution for any damage done to person(s) and/or property;
 - f. Order special treatment or care for your physical or mental health;
 - g. Recommend to the Commissioner of Public Safety that your driver's license be canceled;

- h. Order community work service and/or a fine up to \$700.00;
- i. Require you to attend school until age 18 or completion of graduation requirements;
- j. Consider imposition of additional consequences if you committed a “crime of violence” and/or if a gun or dangerous weapon was involved;
- k. Require you to submit a DNA sample if you have been charged with a felony; and/or
- l. Require you to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample if you have been charged with a sexual offense or predatory offense.

8. If you plead guilty or the judge finds you guilty of a felony after your 14th birthday, this case may be used as a basis for additional jail or prison time if you are sentenced for another felony as an adult before your 25th birthday.

9. If you plead guilty or the judge finds you guilty of an offense, this case may be used as a basis to transfer any future felony-level case to adult court or treat it as an extended jurisdiction juvenile prosecution.

10. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you guilty of the offense. At that time your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING OR ASK THE JUDGE DURING YOUR HEARING.

DATE: _____
 (Signature of Child)

DATE: _____
 (Signature of Parent, Legal Guardian, or Legal Custodian)

Form 9. Statement of Rights: Juvenile Petty Offender Proceedings

STATEMENT OF RIGHTS JUVENILE PETTY OFFENDER PROCEEDINGS

You have been charged with a petty offense by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Require you to pay a fine of up to \$100;
 - b. Require you to take part in a community service project;
 - c. Require you to participate in a drug awareness program;
 - d. Place you on probation for up to six months;
 - e. Order you to undergo a chemical dependency evaluation and participate in an outpatient treatment program;
 - f. Order restitution for any damage to person(s) and/or property; and/or
 - g. Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate by the judge.

8. If you plead guilty or the judge finds you guilty of a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:

- a. Send your driver's license or driving permit to the Commissioner of Public Safety who shall revoke it for one year or until your 18th birthday, whichever is longer.
- b. Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.
- c. If you do not have a driver's license or driving permit, the judge may order denial of your driving privileges for one year or until your 18th birthday, whichever is longer.

9. If you plead guilty to, or the judge finds you committed a third juvenile alcohol or controlled substance offense, and a chemical dependency evaluation recommends inpatient treatment, you have a right to appointment of a public defender or other counsel at public expense.

10. Your parent(s), legal guardian(s), or legal custodians(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____
(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

Form 10. Statement of Rights: Juvenile Traffic Offender Proceedings

STATEMENT OF RIGHTS JUVENILE TRAFFIC OFFENDER PROCEEDINGS

You have been charged as a juvenile traffic offender by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Reprimand you and counsel you and your parent(s), legal guardian(s) or legal custodian(s);
 - b. Continue the case for a reasonable period under such conditions governing your use and operation of motor vehicles or watercraft as the court may set;
 - c. Require you to attend a driver improvement course;
 - d. Recommend that the Commissioner of Public Safety suspend your driver's license;

- e. If you are found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of \$100, the judge may recommend that the Commissioner of Public Safety cancel your driver's license until you are 18;
- f. Place you on probation in your own home under conditions set by the judge including reasonable rules relating to the operation and use of motor vehicles or watercraft;
- g. Order restitution for any damage to person(s) and/or property;
- h. Order community work service or a fine up to \$700; and/or
- i. Order a chemical assessment for alcohol-related driving offenses and charge \$75.00 for the assessment.

8. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____
 (Signature of Child)

 (Signature of Parent, Legal Guardian, or Legal Custodian)

Form 11. Statement of Rights: Juvenile Probation Revocation

**STATEMENT OF RIGHTS
JUVENILE PROBATION REVOCATION**

A probation revocation is a hearing before a judge to decide if a juvenile violated a term or condition of probation, and if so, whether the judge should change the disposition.

You will be asked to admit or deny the allegations of the probation violation. You have the following rights:

1. You have the right to have an attorney represent you. You may have the right to an attorney appointed at public expense.

2. If you deny the allegations of the probation violation, you have a right to a hearing before a judge. The hearing must be held within seven days if you are removed from your home. If you are allowed to remain in your home pending the probation revocation hearing, the hearing must be held within a reasonable time. If you admit the probation violation, you give up your right to a probation revocation hearing.

3. Before the hearing, you are entitled to receive all the evidence of the probation violation that will be used against you, including probation revocation reports and all records relating to the proceedings.

4. At the probation revocation hearing, both you and the prosecuting attorney have the right to offer evidence, make arguments, subpoena witnesses, and call and cross-examine witnesses. You may testify in your own defense or remain silent throughout the hearing. You may present mitigating circumstances or other reasons why the probation violation, if proved, should not result in a change in the disposition order.

5. The probation violation must be proved by clear and convincing evidence. You have the right to appeal the decision of the court after a revocation hearing.

DATE: _____
(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

Form 12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN AN
EXTENDED JURISDICTION JUVENILE CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____ .
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for extended jurisdiction juvenile prosecution, and I understand I have a right to a hearing before a judge.
6. At that hearing, the prosecutor must show by clear and convincing evidence that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against the extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to a jury trial on the above-named offense(s). If I am found guilty, I will be subject to the penalties of both juvenile and adult court, including a stayed sentence under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that if I violate the terms of the stayed adult sentence, I have a right to a hearing, but if the court finds the violation proven, I will be in the adult court system where a prison sentence could be imposed. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 - No promise of any agreement has been made to me.
 - The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find I represent a danger to the public safety if kept solely within the juvenile system and will order an extended jurisdiction juvenile prosecution.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if I remain in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have an extended jurisdiction juvenile hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN A
NON-PRESUMPTIVE CERTIFICATION CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____ .
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is the prosecutor's burden to demonstrate to the judge by clear and convincing evidence that retaining my case in juvenile court does not serve public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

No promise of any agreement has been made to me.

The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if my case is kept in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 14. Waiver of Right to Contested Hearing in a Presumptive Certification Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN A
PRESUMPTIVE CERTIFICATION CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was 16 or 17 years old at the time, having a date of birth of _____ .
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is my burden to show the judge by clear and convincing evidence that retaining my case in juvenile court serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification. I further understand that if I prevailed at the certification hearing, the court must order that my case proceed as an extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that the charged offenses presume an executed prison sentence. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if returned to the extended jurisdiction juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF GUILTY
IN EXTENDED JURISDICTION JUVENILE
CASE**

Child

Court File No. _____

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was _____ years old at the time, having a date of birth of _____ .
3. In understand the charge(s) against me in this case.
4. I understand that I have a right to an attorney.
5. I am represented by an attorney, and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a jury trial, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until proven guilty beyond a reasonable doubt.
 - b. The right to be present and cross-examine all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to remain silent or testify in my own defense. I understand that if I choose to remain silent, my silence could not be used against me.
 - e. The right to a unanimous verdict by the jury.
7. I understand that if I enter a plea of guilty to an offense, I give up the rights listed above in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea, I have a right to withdraw my plea and anything said in court cannot be used against me. However, if the court accepts my guilty plea, there will be a disposition in juvenile court and an adult prison sentence will be stayed.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case. I understand that if the court finds I have violated the terms of the stayed prison sentence, the court can send me to prison.
12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand I could be on probation until my 21st birthday.
14. I understand that my plea may increase the penalties for future offenses, and this plea will be used to compute my adult criminal history score.
15. If I plead guilty and I am adjudicated for a “crime of violence,” it may be illegal for me to possess any firearm.
16. If I plead guilty to a felony, I may be required to submit a DNA sample. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow the adult prison sentence if it is executed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is _____ years.
17. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
18. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
19. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
20. I (have) (have not) been a patient in a mental hospital.
21. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
22. I (have) (have not) been ill recently.
23. I (have) (have not) recently taken pills or medicine.
24. Based upon all of this information, I am choosing to waive or give up my right to have a jury trial.
25. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 9.
26. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child’s Attorney

Form 16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF GUILTY
IN JUVENILE DELINQUENCY MATTER**

Child

Court File No. _____

1. My full name is _____ . I am _____ years old, and my date of birth is _____ . The last grade that I went through in school is _____ or I am currently attending the _____ grade in school.
2. I have received and read a copy of the charging document, and discussed it with my attorney.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of :

_____ committed on or about _____ in _____ County, Minnesota.

5. I am represented by an attorney, whose name is _____ and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a trial before a judge, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until the prosecutor proves me guilty beyond a reasonable doubt.
 - b. The right to be present and ask questions of all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to testify on my behalf or remain silent. I understand if I choose to remain silent the court cannot use my silence against me.
7. I understand that if I plead guilty to an offense, I give up my right to a trial in this case, including the rights stated in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea:
 - a. I have the right to withdraw my guilty plea and have a trial.
 - b. Anything I said in court about my plea cannot be used against me.
11. I understand that if the court accepts my guilty plea, there will be a disposition or sentencing.
12. I understand that the court could place me on probation until my 19th birthday. During that time, the court may change the disposition.
13. I understand that the court can:
 - a. Place me out of home;
 - b. Require me to participate in education and/or treatment programs;
 - c. Require me to do community work service and/or pay a fine;
 - d. Require me to pay restitution;
 - e. Order cancellation, revocation, or suspension of my driver’s license; and/or
 - f. Require me to meet school graduation requirements.
14. If I violate the conditions of probation or commit a new offense, I could be arrested and placed in detention.
15. If the court adjudicates me for the offense I am admitting, I will have a juvenile court record.
16. I understand this offense could be used against me if I commit a future felony-level offense and the prosecutor in that case wishes to move for extended jurisdiction juvenile or certify me to adult court.
17. If I am admitting a felony offense today, and the offense was committed after my 14th birthday, I understand it will be used to compute my adult criminal history score.
18. If I plead guilty and I am adjudicated for a “crime of violence,” it may be illegal for me to possess any firearm.
19. If I plead guilty to a felony, I may be required to submit a DNA sample.
20. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
21. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
22. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
23. I understand that my plea may result in increasing the level of a future offense to a gross misdemeanor or felony.
24. I (have) (have not) been a patient in a mental hospital.
25. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
26. I (have) (have not) been ill recently.
28. I (have) (have not) recently taken pills or medicine.
29. I have read this petition to plead guilty and I understand it. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	Child
DATE:	_____	Child’s Attorney